

New York State Comptroller
THOMAS P. DiNAPOLI

Department of Environmental Conservation

Monitoring of Air Quality (Facility Permits
and Registrations) (Follow-Up)

July 2026 | Report 2025-F-13

Prepared by the Division of State Government Accountability



Contents

Authority	3
Background, Objective, and Scope	3
Summary Conclusions and Status of Audit Recommendations	5
Reporting Requirements	8

Authority

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Environmental Conservation (DEC) to implement the recommendations contained in our initial audit report, *Monitoring of Air Quality (Facility Permits and Registrations)* (Report [2021-S-41](#)).

Background, Objective, and Scope

Air pollution damages human health and the environment in a variety of ways. It can make breathing difficult, cause cancer, and contribute to other serious health effects. Fish and wildlife show harmful effects from acid rain and mercury in the air. Also, greenhouse gases (chiefly carbon dioxide) in the air are changing the world's climate. Sources of air pollution range from large sources, such as chemical plants and electricity-generating facilities, to smaller sources, like dry cleaners and paint spray booths.

The mission of DEC is to conserve, improve, and protect the State's natural resources and environment. DEC issues air pollution control permits and registrations in accordance with its federally approved Air Pollution Control Permitting Program (Program) under Title 6, Part 201, of the New York Codes, Rules and Regulations (Regulation). The Regulation, along with the Uniform Procedures Act (Article 70 of the Environmental Conservation Law) and its implementing regulations, contains the requirements that certain facilities that generate air pollution, and DEC, must follow for air permit application and permitting processes. Permit or registration type is based on a source's potential to emit air contaminants and ability to limit actual emissions. There are three broad categories of facilities that are required to be either permitted or registered with DEC: Title V Facilities (Title Vs), Air State Facilities (ASFs), and Air Facility Registrations (AFRs).

- Title Vs are major sources of air pollution—those that directly emit, or have the potential to emit, air contaminants above federal major source thresholds. Examples of Title Vs include municipal waste combustors, power plants, landfills, manufacturing facilities, and hospitals.
- ASFs are large facilities similar to Title Vs, but the facilities' potential to emit is less, and, therefore, they are not in the same category as Title Vs. ASFs include manufacturing facilities, asphalt plants, sand and gravel operations, etc.
- AFRs are minor sources of air pollution, such as dry cleaners, autobody shops (with paint sprayers), etc. AFRs fall into two general categories: those that naturally emit less than 50% of major facility thresholds and those that "cap-by-rule." Cap-by-rule facilities have the potential to emit air contaminants at or above the threshold of a large source but choose to limit actual annual emissions below 50% of major facility thresholds. The owners or operators of cap-by-rule facilities agree to adhere to additional recordkeeping and self-monitoring requirements to demonstrate compliance with the emissions cap.

To obtain an air permit, a facility owner or operator must complete an application that includes information about the facility's emissions and other operating processes, like raw material usage, and the height and location of stacks or vents. Registration applications require less information than permits. Staff at DEC's nine regional offices receive and review the applications and issue the permits and registrations. Regional staff are also responsible for oversight of permitted and registered facilities.

Operating with an expired permit or registration is considered a violation of the Program and may result in enforcement action by DEC. The State Administrative Procedure Act (SAPA) states that licenses (including permits issued by State agencies) do not expire if timely and sufficient application for renewal of the license is received by the issuing agency. "SAPA extended" remains valid by operation of law until a final decision is made on the renewal application. SAPA applies to permits issued by all State agencies and departments, including air permits issued by DEC. The Regulation also allows for the extension of AFRs if the facility owner or operator submits a renewal application 60 days prior to expiration.

Permit and registration information is maintained in DEC's Air Facility System (System), which acts as DEC's system of record for air pollution control permits and registrations. The System holds information related to compliance, enforcement, and inspections. The System is linked to DEC's public website, which shows current information about issued permits for public consumption.

DEC recognizes environmental justice (EJ) as the fair and meaningful treatment of all people, regardless of race, income, national origin, or color, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. DEC implemented EJ requirements in 2003, with a focus on improving the environment in communities, specifically minority and low-income communities, and addressing disproportionate adverse environmental impacts that may exist in those communities. As of 2020, DEC defines potential EJ areas based on U.S. Census block groups that meet or exceed at least one of several statistical thresholds, determined by a statistical analysis of the American Community Survey data from 2014–2018. In 2021, DEC used a Geographic Information System (GIS) mapping tool, based on the latest American Community Survey data, to update the EJ Map.

DEC's Environmental Justice Permitting Policy (Policy), implemented in 2003, outlines DEC's responsibilities for incorporating EJ into its review of air permit applications. The goal of the Policy is to allow residents within potential EJ areas to obtain information—by requiring applicants subject to the Policy to actively seek public participation through the permit review process—allowing stakeholders to better participate in the decision-making process. The Policy requires DEC staff to conduct a preliminary screening to identify whether a proposed action is in or near a potential EJ area and whether the action is likely to have potentially adverse environmental impacts. The requirements established in the Policy for potential EJ areas will be hereafter referred to as EJ requirements. DEC uses the most current EJ map to determine if a facility falls within an EJ area. If DEC staff determine EJ criteria are met, applicants are required to seek public participation throughout their permit application process, including submitting a Public Participation Plan to DEC as part of their applications. The Public Participation Plan should demonstrate that the applicant will take action to identify stakeholders related to the

proposed action and hold public information meetings. Actions should include, among other measures, establishing document repositories in or near the potential EJ area to make available pertinent project information such as studies, reports, and media releases.

According to System data, as of August 2025, there were 8,471 facilities operating under air pollution control permits or registrations in the State:

- 303 Title Vs
- 708 ASFs
- 7,460 AFRs

The objective of our initial audit, issued on September 20, 2023, was to determine whether DEC was taking necessary action to adequately enforce certain aspects of the State's air contamination and pollution requirements to protect the public and environment from the adverse effects of exposure to pollutants. The audit covered permit and registration data from January 2020 through April 2022 and DEC activities related to these permits and registrations through February 2023. The audit found weaknesses in several aspects of DEC's oversight of the Program—namely, implementation of the Policy and monitoring of permitted and registered facilities—that undermine its ability to ensure compliance with the Program and protect the State's air from harmful pollutants.

The objective of our follow-up was to assess the extent of implementation, as of March 10, 2026, of the four recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

DEC officials made progress in addressing the problems we identified in the initial audit report. Of the initial report's four audit recommendations, two were implemented, and two were partially implemented.

Follow-Up Observations

Recommendation 1 – Improve monitoring and enforcement of EJ requirements, which may include, but not be limited to:

- Updating the Policy to improve the coverage of facilities required to comply with EJ requirements;
- Ensuring permitted facilities located in EJ areas meet EJ permitting requirements; and
- Periodically reviewing and updating the Policy to best meet EJ needs.

Status – Partially Implemented

Agency Action – We determined that DEC did not update the Policy to improve the coverage of facilities required to comply with EJ requirements or determine that it best met EJ needs. However, DEC made a technical clarification regarding the use of the EJ indicator, a field within

DEC's Department Application Review Tracking (DART) system, and communicated it to staff to promote consistency in the staff's review of facilities and applicability of EJ requirements.

To assess if DEC reviewed whether facilities were subject to EJ requirements, we reviewed a sample of 10 facilities. The sample included facilities from different regions throughout the State with permit effective dates after April 18, 2003 (the date the Policy was enacted). Specifically, we found that DART now prompts staff to consult the Commissioner's Policy 29: Environmental Justice and Permitting Policy and complete the EJ field. The codes provide staff with a means to identify facilities subject to EJ requirements.

We reviewed the same 10 facilities to determine if they met EJ requirements. Of the 10 we selected, only one facility met EJ requirements, including completing a Public Participation Plan. The remaining nine facilities were not subject to EJ requirements because either the facilities were submitting permit renewals, or DEC or another lead agency determined EJ requirements were not applicable.

Recommendation 2 – Enhance oversight of the general Program compliance, which may include, but not be limited to:

- Developing a course of action to address the upcoming influx of expired permits and registrations;
- Reducing the population of facilities operating under permits or registrations with no expiration date; and
- Addressing long delays in processing SAPA extended permits to reduce the number of facilities operating with outdated permits.

Status – Implemented

Agency Action – To prepare for the influx of expiring permits and registrations, DEC provided various training sessions for staff on the application review process, including courses on entering applications in the System, building permit reports, and case management. In addition, DEC created a shared messaging channel to answer staff questions regarding permitting and compliance and established a shared cloud-based site populated with permit-related guidance and resources, and template letters that can be updated and sent to facilities when their permits are set to expire. DEC also holds meetings, as necessary, between central and regional office staff to discuss Title V and ASF permit status updates. DEC officials indicated that they increased staffing in the central and regional offices and those staff's duties include enforcing Program compliance.

Our original audit identified 4,271 AFRs and 234 ASFs without expiration dates. As of September 23, 2025, there were 3,278 AFRs and 227 ASFs without expiration dates—a reduction of about 23% and 3%, respectively. Our original audit also identified 16 ASFs and 166 Title Vs that were SAPA extended. As of January 26, 2026, DEC reduced the number of SAPA-extended ASFs to 10 and Title Vs to 116—a 38% and 30% decrease, respectively. New facilities continue to be added as they request or are automatically SAPA extended—80 ASFs and 75 Title Vs were added to the current list of SAPA-extended facilities, a 500% and 45% increase, respectively.

DEC officials indicated that the increase is due to the influx of additional and timely permit renewal applications.

Recommendation 3 – Focus efforts on monitoring and enforcement of AFRs' compliance with Program requirements, which may include, but not be limited to:

- Performing additional risk-based inspections of AFRs;
- Improving follow-up with inspection deficiencies to ensure violations are corrected; and
- Issuing additional guidance on eligibility for cap-by-rule classifications.

Status – Implemented

Agency Action – DEC initiated a Region 4 Pilot Program to increase monitoring and enforcement of AFRs' compliance with Program requirements, including identifying its riskiest facilities, inspecting AFRs with no expiration dates, and requesting information from the facilities to update their registrations.

To improve follow-up with inspection deficiencies, DEC developed and presented training to regional staff on case development and resolution. Additionally, the U.S. Environmental Protection Agency provided DEC's regional staff training on enforcement-related topics. DEC also created a shared messaging channel where staff can ask enforcement questions.

We selected a sample of five facilities with noted deficiencies to determine if DEC made efforts to address and/or follow up on the deficiencies. Of the five facilities we reviewed, DEC issued an Order of Consent (OOC) to three facilities. The three facilities addressed the issues identified in the OOC and paid the respective fines. For the fourth facility, DEC determined, after an inspection of the site, that the facility did not need to be registered for the operations it was currently performing. For the remaining facility, DEC conducted a follow-up inspection and issued a Notice of Violation (NOV). That facility has yet to address a substantial number of the issues noted in the NOV.

In January 2024, DEC issued guidance to regional staff on the eligibility of cap-by-rule classification. This guidance is an internal document shared with regional staff to ensure consistency across the regions with the cap-by rule classification. The document addresses the cap-by-rule classification, eligibility, and application review. We selected a judgmental sample of five cap-by-rule facilities to determine whether the regional staff followed the guidance and found all five were properly classified and submitted documentation to support compliance with cap-by-rule.

Recommendation 4 – As soon as practicable, update or replace the System to better meet the needs of the Program.

Status – Partially Implemented

Agency Action – On January 2, 2024, DEC, in coordination with the New York State Office of Information Technology Services, secured funding to replace the System and issued a Request for Information to gather information on available technology options. DEC issued a Request for Quote on May 22, 2025, and received only one quote from a vendor on July 8, 2025. The

contract was awarded to the vendor, and work on the new system is in the early stages of production. Once operational, the new system is expected to improve DEC's air program efficiency in facility permitting; compliance; and enforcement matters, including tracking, stationary-source emissions inventory accounting, and facility fee billing.

Reporting Requirements

DEC officials are requested, but not required, to provide information about any actions planned to address the unresolved issues discussed in this follow-up within 30 days of the report's issuance. We thank the management and staff of DEC for the courtesies and cooperation extended to our auditors during this follow-up.



Contact

Office of the New York State Comptroller
110 State Street
Albany, New York 12236

(518) 474-4044

www.osc.ny.gov

Prepared by the Division of State Government Accountability

July 7, 2026

Executive Team

Andrea C. Miller – Executive Deputy Comptroller

Tina Kim – Deputy Comptroller

Stephen C. Lynch – Assistant Comptroller

Contributors

Heather Pratt – Audit Director

Amanda Eveleth – Audit Manager

Richard Podagrosi – Audit Supervisor

Nancy Hobbs – Examiner-in-Charge

Jeffrey Dormand – Senior Examiner

Noah Weinberger – Senior Examiner



FOLLOW US: osc.ny.gov/subscribe