

**STATE OF NEW HAMPSHIRE  
OFFICE OF LEGISLATIVE BUDGET ASSISTANT - AUDIT DIVISION**

**PROPOSED SCOPE STATEMENT  
PERFORMANCE AUDIT OF AIR RESOURCES DIVISION**

In December 2015, the Fiscal Committee approved a joint Legislative Performance Audit and Oversight Committee (LPAOC) recommendation to conduct a performance audit of the Department of Environmental Services (DES) - Air Resources Division (ARD). We held an entrance conference in March 2016. However, one week later, the LPAOC voted to suspend audit work due to other priorities. We resumed the audit and held a re-entrance conference at the end of August 2017.

**Background**

In 1987, the Legislature created the New Hampshire DES by consolidating and restructuring four formerly separate agencies: the Office of Waste Management, the Water Supply and Pollution Control Commission, the Water Resources Board, and the Air Resources Agency. RSA 21-O:10 established the ARD to assume all responsibilities previously overseen by the Air Resources Agency. Specifically, the ARD's mission includes "achieving and maintaining air quality in New Hampshire that is protective of public health and our natural environment."

**Federal Clean Air Regulation**

Regulation of the nation's air quality became a priority in 1970 when Congress passed the Clean Air Act (CAA) to regulate air emissions from stationary and mobile sources of pollution. Prior to this, federal air pollution efforts primarily focused on research, allowed states and municipalities to develop their own air control programs, and did not include mobile sources. The CAA authorized the federal Environmental Protection Agency (EPA) to establish national ambient air quality standards (NAAQS) to protect public health and welfare, and to regulate emissions of hazardous pollutants with the goal of all states meeting NAAQS by 1975. To achieve this, EPA directed states to develop State Implementation Plans (SIP) applicable to the specific sources in their state. However, states had not achieved these standards, even in 1977.

In 1990, Congress passed the Clean Air Act Amendments (CAAA) authorizing EPA to establish a national operating permit program and improve enforcement, ensuring better compliance. The law required EPA establish standards for stationary sources that emit, or have the potential to emit, certain amounts of regulated pollutants. Title V of the CAAA required states to develop and implement a program to issue a permit outlining all requirements a source must comply with before it could operate. It also required the source to file periodic reports showing compliance, and required states establish fees to cover all reasonable program costs. Additionally, the CAAA allowed EPA to classify nonattainment areas where air quality did not meet federal air quality standards and established a process to impose sanctions on states failing to meet the standards. EPA was allowed to delegate states the authority to implement the permit and enforcement programs on its behalf, and routinely audits states, including New Hampshire, to ensure programs were in compliance with federal requirements.

**ARD Organization And Staffing**

The ARD administers the requirements of the CAA in New Hampshire through various programs in its three bureaus: Permitting and Environmental Health, Technical Services, and Compliance. In addition to staff in the three Bureaus, personnel in the Director's Office are

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responsible for scientific analysis, strategic planning, and ensuring State plans conform to EPA requirements. The ARD has 54 filled staff positions with an additional 16 positions vacant as of October 2017. The 11 member Air Resources Council provides guidance to the ARD by offering input from various interest groups, reviewing proposed administrative rules, and hearing appeals of ARD decisions and orders.

*Statewide Permitting Program*

EPA delegated ARD authority to implement the Title V operating permit program on its behalf in 1998. Prior to 1998, the ARD operated both a construction and operating permit program consisting of federal and state construction permits, as well as state operating permits. The program regulates and limits new and existing sources of pollution by establishing the requirements each source must meet to be in compliance with State and federal standards. Prior to adding a new, or modifying an existing, pollution source, a facility must first obtain a temporary, or construction, permit allowing it to construct and commence operations. Once it is operational, the facility must obtain either a State or Title V operating permit depending on its classification. Permits are valid for up to five years. Facilities emitting, or having the potential to emit, pollution at or above the EPA-established threshold must obtain a Title V operating permit. Facilities emitting below that threshold are required to obtain a State operating permit. At the end of State fiscal year (SFY) 2017, the ARD regulated almost 650 stationary sources of pollution through its permitting program, 34 of which are considered Title V sources. In SFY 2017, the ARD received 132 permit applications.

*Air Monitoring Program*

In 1970, EPA established national ambient air quality standards, and in 1990, required states meet national ambient air quality standards or face sanctions. New Hampshire has been monitoring ambient air quality since 1962, when the first air monitoring station was built in Berlin, and expanded as part of CAA implementation. The State's current monitoring network collects air quality data at 12 locations. These stations collect meteorological data, as well as information on ozone and other pollutants such as nitrogen oxide, sulfur dioxide, carbon monoxide, and small particle pollution found in New Hampshire's ambient air. Data collected are used to forecast air quality action days when ozone and particulate matter levels are forecasted to reach unhealthy levels, and to demonstrate compliance with federal ambient air quality standards. The EPA routinely audits the air monitoring program.

*Compliance Programs*

The Compliance Bureau oversees programs to ensure entities are in compliance with their permit, and federal and State air pollution regulations and laws. The Bureau conducts on-site inspections, responds to air quality complaints, monitors compliance stack-testing, asbestos management and licensing, and conducts enforcement. It also oversees the State's emissions inventory.

- *Stationary Source Compliance Inspections* are conducted on-site to ensure facilities comply with their permit conditions. Onsite visits may consist of inspecting maintenance

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and repair records, reviewing equipment operation logs, reviewing visible emission test results, checking compliance with general recordkeeping requirements, and other items. Inspectors may also examine other equipment found on-site to determine whether they may need a permit. In SFY 2017, Bureau personnel conducted 91 compliance inspections.

- *Stack Testing* is conducted on-site to ensure facilities comply with emission limits outlined in their permit. The facility must hire a contractor to conduct the emission testing. However, ARD compliance testing staff review proposed test protocols, observe all stack tests, and review test results. In SFY 2017, Bureau personnel observed 83 stack tests.
- *Asbestos Notification* conducts onsite visits and inspections of asbestos abatement projects. Contractors must notify the ARD prior to starting an asbestos mitigation project. ARD asbestos inspectors may perform onsite inspections to ensure contractors and workers are DES-certified to perform abatement, and ensure protocols are followed. In SFY 2017, the Bureau visited or inspected 169 asbestos abatement projects.
- *Enforcement* receives referrals of potential violations found during compliance inspections, stack testing, or permitting. Staff also receive potential violations through complaints and the asbestos program. Enforcement personnel may recommend numerous actions, from recommending no action be taken against the facility, to recommending fines or other sanctions. If warranted, severe violations may be referred to the Department of Justice. In SFY 2017, the Bureau received 139 referrals, 70 of which resulted in an enforcement action. Fifty referrals were still open as of October 2017.
- *Emissions Inventory* staff compile and maintain the State's emission inventory, which consists of pollution emitted by permitted stationary sources; residential sources; and mobile sources, including vehicles. Data are reported to EPA for inclusion in the national emissions inventory which tracks the country's emission levels. Staff also calculate the emissions-based fees assessed on stationary sources annually, which account for the majority of the ARD's revenues.

*Environmental Health Programs*

The Environmental Health Section works to promote and maintain environmental health for all DES divisions. Staff conduct health risk assessments for environmental contaminants and educate the public about health effects of environmental contaminants. The section also administers the Air Toxics Program, which was created to help protect public health and preserve the environment by controlling almost 190 EPA-established hazardous air pollutants likely to be emitted by businesses in the State. The program has also established ambient air limits for approximately 700 other regulated toxic air pollutants required by State law and requires businesses to demonstrate they do not exceed established limits.

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*Technical And Mobile Source Programs*

The Planning and Mobile Sources Section oversees the ARD's energy efficiency, climate change, and mobile source efforts. Personnel work with regional planning commissions to influence public transportation systems, promote energy efficiency initiatives, promote alternative vehicle technology, and collaborate with coastal communities on infrastructure planning to better prepare for climate change.

**Audit Scope**

This performance audit will focus on the following question: ***Did the Air Resources Division operate efficiently and effectively in federal fiscal years 2016 and 2017?*** Specifically, we will evaluate the ARD's:

- *process for approving construction and operating permits,*
- *compliance inspections and stack testing, and*
- *enforcement referrals.*

To address these objectives, we plan to:

- review relevant State laws, administrative rules, policies, procedures, and guidelines;
- interview DES and ARD personnel and staff, and contact external stakeholders;
- review audits, evaluations, and guidance from other states and the EPA;
- review and analyze ARD permits, inspection reports, compliance testing documents, and enforcement files;
- review similar practices in nearby states; and
- compare ARD practices to relevant guidelines and accepted practices.

We anticipate completing this audit and presenting the final report to the Fiscal Committee in the spring of 2018.