VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Air Permits
Location/Division	3rd Floor / Building C / Air Permits Division / Office of Permitting and Registration
Contact Name	Steve Hagle, P.E.
Actual Expenditures, FY 2008	$10,427,835
Number of FTEs as of August 31, 2008	188.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Texas Clean Air Act (TCAA), Texas Health and Safety Code, Chapter 382, governs all air quality permitting in the state and implements provisions of the Federal Clean Air Act (FCAA). The TCAA requires authorization for all air contaminants in addition to authorization of federally regulated pollutants.

The main objective of the Air Permits Division is to review and authorize air applications and registrations for facilities that, when operational, would emit contaminants into the air. The division meets its objective through two air permitting programs: New Source Review (NSR) Permits and Title V Federal Operating Permits (FOP). The NSR Permits Program has a major and a minor component. The term “major” is used to determine the applicability of federal (or major) NSR and Title V and is based on a stationary source’s annual potential to emit a federally regulated pollutant. The state’s “minor” NSR program applies to all facilities that emit pollutants at levels less than a major source.

The NSR Permit Program requires stationary sources of air pollution to obtain authorization before construction or alteration of a facility. For “major” NSR facilities, the authorization types include a Prevention of Significant Deterioration (PSD) permit and a Nonattainment (NA) permit. Several types of “minor” NSR authorizations are available, and a source’s facilities may be able to qualify for more than one type under the NSR permits program.

Title V refers to the section of the FCAA that requires this type of permit. The Title V FOP Program requires major sources and certain federally identified minor sources to obtain a permit that consolidates all applicable air requirements in a single document. A Title V permit grants a source permission to operate.

NSR Permits Program

The NSR Permits Program requires stationary sources of air pollution to obtain permits before construction begins. The NSR is also referred to as *construction permitting* or *preconstruction permitting*. Under the TCAA, the NSR program addresses all contaminants emitted from a facility including those pollutants for which there is a national ambient air quality standard (NAAQS) and precursors to the formation of identified pollutants, if applicable.

Primary NSR Authorization Types

Before work begins, a person who plans to construct a new facility or to modify an existing facility must satisfy the criteria of a streamlined authorization for a *de minimis* facility or source, a permit by rule, or a standard permit or obtain a case-by-case permit (minor NSR permit or federal NSR PSD or NA permit).

- *De Minimis Facilities/Sources.* De minimis emissions are so small that a registration, authorization, or certification before construction is not required. To qualify, emissions must meet the conditions specified by commission rule.

- *Permit-by-Rule (PBR) Claims and Registrations.* Permits by rule are for facilities with insignificant emissions of air contaminants that produce more than *de minimis* emissions but less than other permitting options. Some PBRs require registration. Facilities must meet all conditions specified by commission rules for PBR requirements. There is no case-by-case review for PBRs. A PBR can never be used to authorize emissions that must undergo PSD or NA review. The public participates in rule development and adoption.

- *Standard Permit (SP) Claims and Registrations.* If an applicant cannot claim a PBR for a facility, the facility may qualify for a SP. Standard permits are tailored to industry type. Facilities must meet all conditions specified by the SP. There is no case-by-case review for SPs. An SP can never be used to authorize emissions that must undergo PSD or NA review. The public participates in the SP adoption process.

- *New Construction or Modification Permit.* Applicants with facilities that do not qualify for PBRs or SPs can submit an NSR permit application. New construction and modifications to extant facilities are also known as *case-by-case permits* for major or minor sources. Applicants can negotiate a best available control technology (BACT) and emission limit, which is not allowed for PBRs and SPs. An applicant must demonstrate compliance with all applicable rules and regulations and acceptability of off-property health impacts due to permitted emissions. The public participates in the permitting process and has the opportunity to request meetings and hearings on individual applications. A minor NSR construction permit must be renewed every 10 years.

- *PSD Permit.* A PSD permit is a federal NSR permit required if an applicant wants to locate in an area that meets NAAQS and permitted emissions would exceed federal significant emission levels for regulated pollutants. Applicants must identify control technologies and demonstrate compliance with all applicable rules and regulations; and acceptable off-property impacts due to permitted emissions. The public participates in the permitting process and has the opportunity to request meetings and hearings. A PSD permit does not expire but can be modified. If a PSD permit is required, the authorization is separate, based on federal requirements, and PSD, NA, and minor NSR permit authorizations can exist at the same time.

- *Nonattainment Permit.* An NA permit is a federal NSR permit required if an applicant wants to locate a source of emissions to an area that does not meet NAAQS and permitted emissions would exceed federal significant emission levels for that area. Unlike PSD permits, NA permits require enhanced control technologies and emission reductions to offset the proposed emissions increases. The public participates in the permitting process and has the opportunity to request meetings and hearings. An NA permit does not expire but can be modified. If an NA permit is required, the authorization is separate, based on federal requirements, and NA, PSD, and minor NSR permit authorizations can exist at the same time.

Other NSR Authorization Types

- *112(g) Permit.* A 112(g) permit is a federal NSR construction or modification permit that establishes federally enforceable case-by-case maximum achievable control technology (MACT) emission limitations and controls for hazardous air pollutants (HAPs) at a major source. Under FCAA 112(g), relating to HAPs, the division must determine MACT standards for major sources of HAPs for which a standard has not been promulgated or has been vacated by the courts.

- *Plant-wide Applicability Limit (PAL) Permit.* Major source permit applicants have the option of establishing a federal PAL for all facilities at a site or a stand alone process. The site-wide emission caps provide facilities with greater flexibility to modernize operations without triggering federal NSR. A PAL must be renewed every 10 years.

- *Flexible Permit.* A flexible permit is a minor NSR construction or modification permit that covers emissions from many facilities. This type of authorization allows an owner or operator more flexibility in managing operations by staying under an overall emissions cap or individual emission limitation. Owners or operators are allowed to structure flexible permits to best serve their needs while assuring BACT equivalent controls and acceptable impacts.

- *Maintenance, Startup, Shutdown Permit (MSS).* An MSS permit is a

construction or modification permit for major or minor NSR that establishes emission limitations for planned MSS sources or activities.

- *Permit Amendment.* After a permit is issued, the permit holder may need to change the manner in which the facility is operated. An amendment consists of a change in method of control, change in character of emissions, or increase in actual or allowable emissions. Amendments go through the same review process as an NSR permit for a new facility, which may include public participation if the emissions increases exceed the de minimis criteria defined by commission rule and change in character.

- *Changes to a Qualified Facility.* The 74th Texas Legislature passed SB 1126 which gave qualified facilities the flexibility to make physical and operational changes without a permit. All facilities involved must be qualified at the time of the change. A facility is qualified if it had a permit or amendment issued within 120 months before the change occurred or it is exempted from permitting requirements, or has controls that are at least as effective as best available control technology. There can be no net increases or new contaminants, and SB 1126 cannot be used to authorize new facilities. SB 1126 authorization requires notification, documentation, and recordkeeping.

Title V Federal Operating Permit Program

The Title V Program requires major sources and certain minor sources to obtain a permit that consolidates all applicable air requirements in a single document. A Title V permit grants a source permission to operate. There are two types of operating permits:

- *General Operating Permit (GOP).* The GOP is a streamlined Title V authorization that is designed to cover numerous similar sources. An owner or operator can apply for an authorization to operate under a GOP. The GOP is similar to an NSR SP as it contains uniform conditions that apply to all sources in a defined class. Applicants cannot claim a GOP if they are subject to NSR case-by-case construction or modification permits. The public participates in GOP adoption.

- *Site Operating Permit (SOP).* The SOP documents all requirements that apply at a site, or an area for large sites. The public participates in the process and is notified through public notice in newspapers and sign postings, and has the opportunity to request meetings and petition the Environmental Protection Agency (EPA). Applicants must certify compliance with the SOP annually.

Other Title V Authorization Types

- Permit Revisions and Renewals. After initial permit issuance, changes at a site or in applicable requirements may result in the need to revise the Title V

permit. Changes at a site may include addition or removal of emission sources, operational changes, or changes to existing monitoring, reporting, recordkeeping, and testing requirements identified in the permit. The public participates in the process and is notified through public announcement at the TCEQ Web site or public notice in newspapers and sign postings, and has the opportunity to request meetings. Also, the public can petition the EPA for significant revisions and renewals.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Number	Type	FY 08 Performance Measure	Percent of Annual Target
01-02.01	Outcome	Percent of air quality permit applications reviewed within established time frames	98.89
01-02-01.01	Output	Number of state and federal new source review air quality permit applications reviewed (key)	81.79
01-02-01.02	Output	Number of federal air quality operating permits reviewed (key)	78.91
01-02-01.01	Explanatory	Number of state and federal air quality permits issued	74.70
01-02-01.02	Explanatory	Number of federal air quality permits issued	74.11

The variances in the performance measures listed above are attributable to state and federal regulatory rule changes and rules vacated by federal court that extended the time needed to review and issue air permits.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The following history highlights significant actions that have directly affected the Air Permits Division.

2001

- The 77th Legislature made the permitting of grandfathered facilities mandatory as part of the agency's sunset review in HB 2912. Facilities that were not modified since August 31, 1971 were previously "grandfathered" from the requirement to obtain a permit.

2006

- The commission adopted rules that remove, over a seven-year period, the ability for regulated entities to claim an affirmative defense for planned maintenance, startup, and shutdown activities. While the rule did not require authorization, it resulted in increased requests to permit planned maintenance, startup, and shutdown emissions.

2007

- The D.C. Circuit Court of Appeals issued a final ruling on the court's December 2006 decision on the rule to implement the eight-hour ozone NAAQS. This ruling restores NSR applicability thresholds and emission offsets pursuant to classifications previously in effect for areas designated in nonattainment for the one-hour ozone standards.

2008

- The D.C. Circuit Court of Appeals restored electric utility steam generating units to the list of regulated source categories subject to MACT standards and invalidated the EPA's Clean Air Mercury Rule.

- Since 1992, when the EPA approved Texas' major clean air permitting plan, the state has submitted more than 30 regulatory changes. The Business Coalition for Clean Air (BCCA) Appeal Group, Texas Association of Business (TAB), and Texas Oil and Gas Association (TxOGA) sued the EPA seeking deadlines for it to act on the state's proposed changes to its previously approved plan. Although the EPA approved the original and many updates to the Texas NSR permitting program, EPA has not approved significant portions of various subsequent air permitting rules submitted to the EPA since 1993 as revisions to the State Implementation Plan (SIP).

2009

- The BCCA, TAB, TxOGA, and EPA agreed to a schedule whereby the EPA shall sign for publication in the *Federal Register* notices of final rulemaking to approve or disapprove, in whole or in part, key SIP revisions.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Air Permitting Program affects any organization or person that plans to construct a new facility or modify an existing facility that emits air contaminants into the air, including the public; universities; city and county governments; small businesses; manufacturers; industries; semiconductor plants; power plants; refineries; chemical plants; mechanical, construction, and agricultural activities; etc. The Air Permits Division does not track specific affected persons or organizations but does track permit authorizations by major- or minor-source categories. There are approximately:

- 52,000 active NSR permits and authorizations at 28,000 sites; and

- 500 general operating permits and 1100 site operating permits at 1,400 Title V sites.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The Air Permits Division functions under a division director and is part of the Office of Permitting and Registration. All Air Permits personnel, except for five in Corpus Christi, San Antonio, and Houston, are located in the central office.

Business Program Section (BPS). The BPS supports air permitting by conducting the air-permit initial administrative review. Key tasks: updating the central registry and division database, checking fee and delinquent-fee applicability, requesting site review, confirming administrative completeness of applications, and development and distribution of public-notice packages. In addition, the BPS assists with document processing, permit distribution, human resources, and financial management.

Technical Program Support Section (TPSS). The TPSS supports air permitting by maintaining information management systems and databases; developing templates, forms, and word-processing macros; developing rules; evaluating or conducting air dispersion modeling; and acting as liaison with internal agency staff and external government, regulated, and public entities.

Technical Review. Once it is deemed administratively complete, an application is transferred to one of the five permitting sections for the technical review to determine whether the operations of a proposed facility will comply with all applicable federal and state rules and regulations and not adversely impact public health or welfare.

During the technical review process, the permit reviewer:

- checks compliance history and regional site review comments;
- identifies sources;
- reviews emission characterization;
- quantifies emissions;
- determines federal applicability;
- determines BACT;
- determines the applicability of federal and state regulatory limits;
- evaluates impacts on the public health and welfare; and
- drafts the permit.

In addition, the technical review includes, as applicable:

- first-public-notice verification;
- second-public-notice preparation and verification;
- meetings with the public; and
- response to comments from public notices, meetings, and hearings.

Rule Registrations Section (R&RS). This section conducts the technical review for PBRs and SPs. Reviewers must ensure that each PBR claim meets all of the general conditions and specific conditions of the PBR or that the facility meets the general and specific conditions of the SP. The reviewer checks that the registrant has included necessary emission calculations.

The R&RS also conducts the technical review for Title V general operating permits. The process for granting an authorization to operate is streamlined since these authorizations are not subject to individual public notice and the permit requirements are predetermined. The permit reviewer must determine if the application meets the qualification criteria, verify site-wide and unit-specific requirements, and ensure that the application has proper certification.

NSR Permits Sections (Chemical, Combustion and Coatings, and Mechanical, Agricultural and Construction). These sections conduct the technical review for NSR case-by-case permits. This type of review is more complicated than one of the streamlined permit authorizations. In addition to new construction and modification to existing facilities, other activities requiring NSR authorization include changes in application representations and renewal of existing authorizations. The NSR Permits Sections also conduct the technical review for major sources or major modifications. These reviews are similar to a minor NSR case-by-case permit review but can be more complex.

PSD Permits. PSD permitting applies to major sources and major modifications in attainment areas. A permit reviewer determines applicability of federal regulatory limits; evaluates BACT; and evaluates impacts through an air quality analysis to demonstrate that permitted emissions will not cause or contribute to an exceedance of an NAAQS or PSD increment concentration. The effects to visibility, soil and vegetation, and any adverse impacts to Class I areas must also be determined. The permit reviewer also develops the preliminary determination summary of key portions of the technical review, part of the second public notice package.

NA Permits. Nonattainment permitting applies to major sources and major modifications in nonattainment areas. The permit reviewer determines applicability of federal limits based on the specific nonattainment county designation; evaluates lowest achievable emission rate controls, which are usually more stringent than BACT; and oversees the acquisition of emission reductions to offset the proposed emissions increases.

Operating Permits Section (OPS). The OPS conducts the technical review for Title V site operating permits. Permit reviewers evaluate Title V applications and develop permits that codify all applicable state and federal requirements for all of the emission units at a permitted site or area. The SOP includes all applicable requirements including emissions limits and monitoring, record keeping, and reporting. The permit also requires that the source report compliance status with

respect to permit conditions to the TCEQ. The permit reviewer also develops the statement of basis, a document that explains the terms of the permit and is part of the public notice package. In addition, the technical review includes public notice verification and response to comments as applicable.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
5094	Operating Permit Fees	$6,344,085
0151	Clean Air Account	$4,035,669
0555	Federal Funds	$48,081

Strategy—A.2.1—Air Quality Permitting

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

No internal or external programs provide identical or similar services or functions.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not Applicable

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

EPA Region 6 Multimedia Planning and Permitting Division, Air Programs. The Air Permits Division implements the federal NSR Permit and Title V federal operating permit programs.

Local Programs. The Air Permits Division coordinates with local city and county programs during the permitting process.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**

- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Expended - $210,661

Contracts - 7

Temporary staff services and engineering interns were obtained to support the division's permitting processes, allowing the full-time staff to focus on complex and highly advanced permit projects.

The division monitored work weekly and vendors met expectations. The division reconciled contract costs monthly and reported quarterly to its director. All funds were spent appropriately.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Proposed statutory changes are unknown at this time but may be required for the commission to satisfy the EPA's concerns related to the NSR and Title V Operating Permit Programs and obtain approval of the SIP (indicated in the last bullet of Question D, above).

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

The division issues permits and authorizations that meet the requirements of the Texas Clean Air Act. The EPA approved the division's NSR air permitting program and the division issues "federal" permits (for prevention of significant deterioration and nonattainment) on the EPA's behalf. In addition, the EPA has approved the division's Title V program.

Air quality permits are legally binding documents that include enforceable conditions with which the owner or operator must comply. Some permit conditions are general to all types of facilities; some are developed for specific facilities. Overall, the permit conditions establish limits on the types and amounts of air pollution allowed, operating requirements for pollution control devices or pollution prevention activities, and monitoring and record-keeping requirements. Several flowcharts, *Abbreviated Process Flow,* showing the highest volume permit reviews are included following Question O.

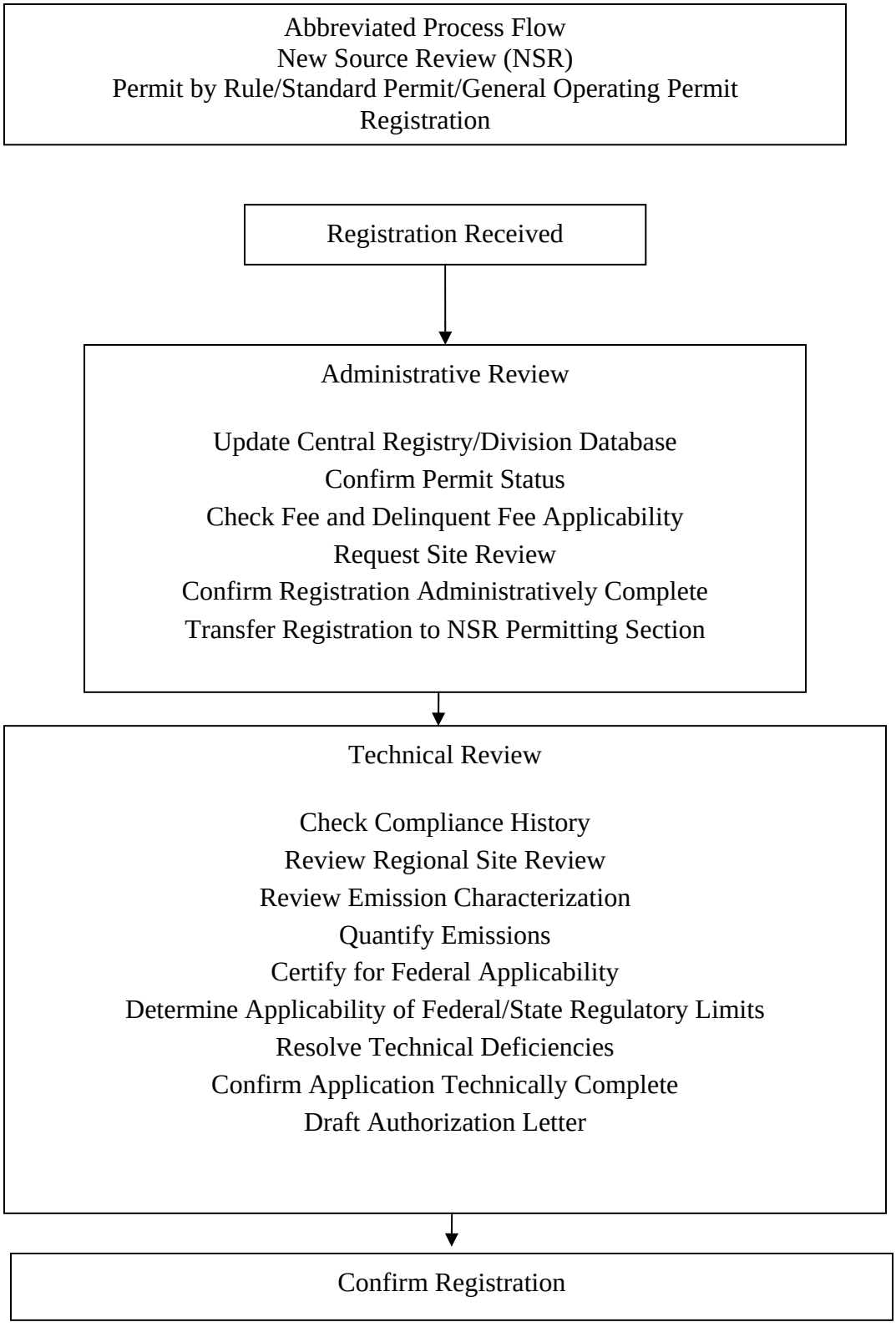
N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

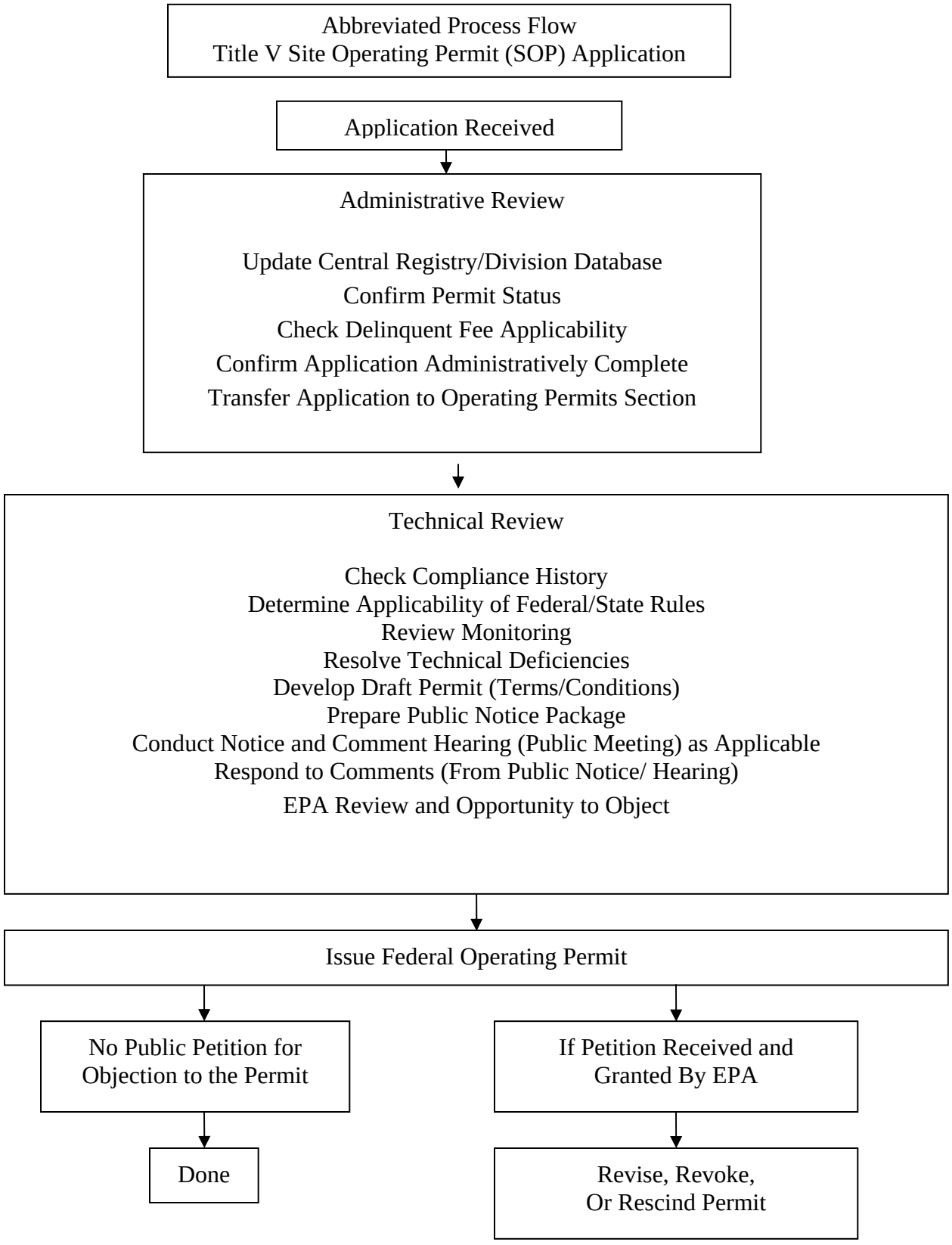
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

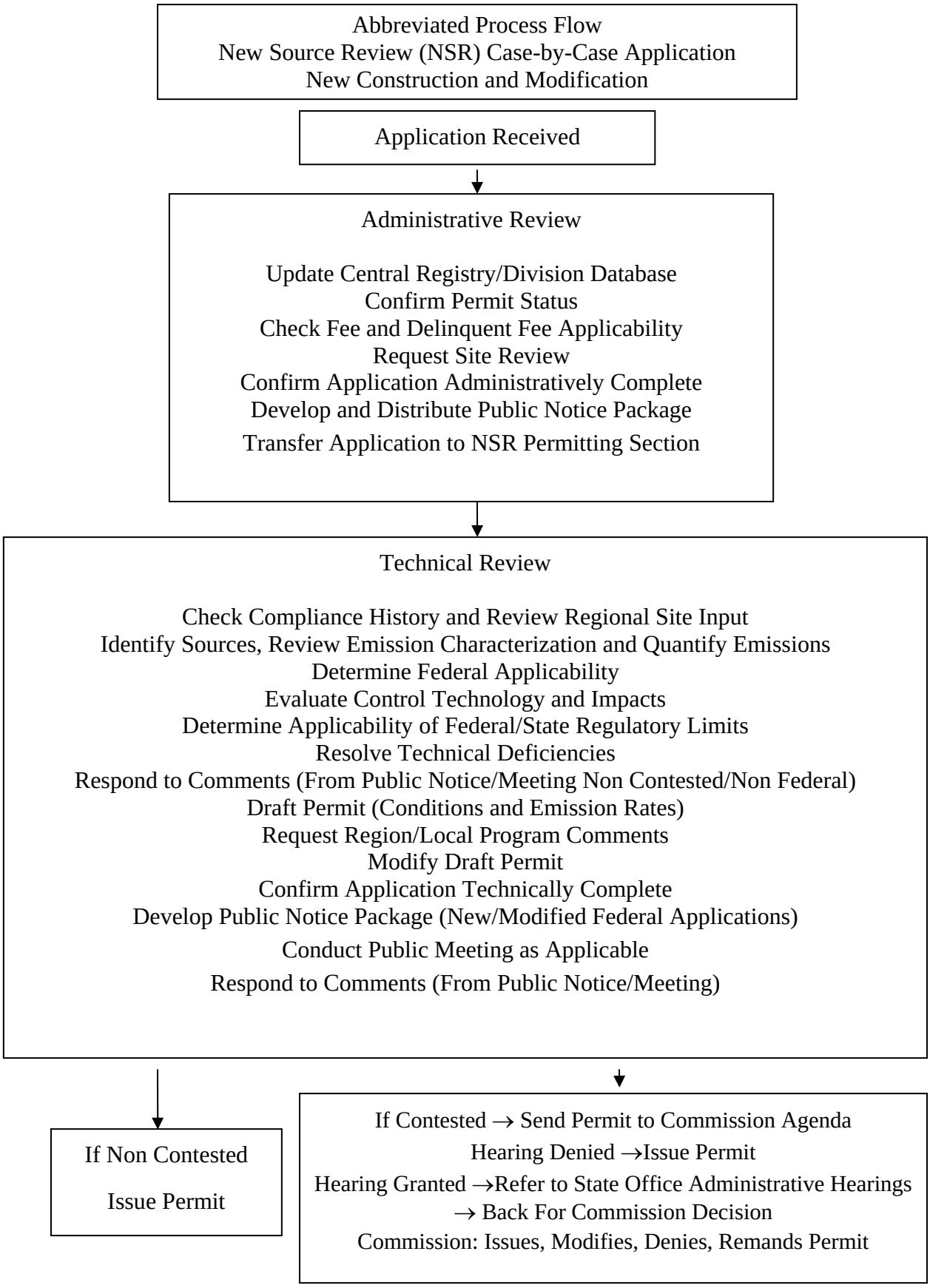
Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable, please see Field Operations Question O for complaint-related data related to this program.


Abbreviated Process Flow
New Source Review (NSR)
Permit by Rule/Standard Permit/General Operating Permit
Registration
Registration Received
Administrative Review
Update Central Registry/Division Database
Confirm Permit Status
Check Fee and Delinquent Fee Applicability
Request Site Review
Confirm Registration Administratively Complete
Transfer Registration to NSR Permitting Section
Technical Review
Check Compliance History
Review Regional Site Review
Review Emission Characterization
Quantify Emissions
Certify for Federal Applicability
Determine Applicability of Federal/State Regulatory Limits
Resolve Technical Deficiencies
Confirm Application Technically Complete
Draft Authorization Letter
Confirm Registration


Abbreviated Process Flow
Title V Site Operating Permit (SOP) Application
Application Received
Administrative Review
Update Central Registry/Division Database
Confirm Permit Status
Check Delinquent Fee Applicability
Confirm Application Administratively Complete
Transfer Application to Operating Permits Section
Technical Review
Check Compliance History
Determine Applicability of Federal/State Rules
Review Monitoring
Resolve Technical Deficiencies
Develop Draft Permit (Terms/Conditions)
Prepare Public Notice Package
Conduct Notice and Comment Hearing (Public Meeting) as Applicable
Respond to Comments (From Public Notice/ Hearing)
EPA Review and Opportunity to Object
Issue Federal Operating Permit
No Public Petition for Objection to the Permit
If Petition Received and Granted By EPA
Done
Revise, Revoke, Or Rescind Permit


Abbreviated Process Flow
New Source Review (NSR) Case-by-Case Application
New Construction and Modification
Application Received
Administrative Review
Update Central Registry/Division Database
Confirm Permit Status
Check Fee and Delinquent Fee Applicability
Request Site Review
Confirm Application Administratively Complete
Develop and Distribute Public Notice Package
Transfer Application to NSR Permitting Section
Technical Review
Check Compliance History and Review Regional Site Input
Identify Sources, Review Emission Characterization and Quantify Emissions
Determine Federal Applicability
Evaluate Control Technology and Impacts
Determine Applicability of Federal/State Regulatory Limits
Resolve Technical Deficiencies
Respond to Comments (From Public Notice/Meeting Non Contested/Non Federal)
Draft Permit (Conditions and Emission Rates)
Request Region/Local Program Comments
Modify Draft Permit
Confirm Application Technically Complete
Develop Public Notice Package (New/Modified Federal Applications)
Conduct Public Meeting as Applicable
Respond to Comments (From Public Notice/Meeting)
If Non Contested
Issue Permit
If Contested → Send Permit to Commission Agenda
Hearing Denied →Issue Permit
Hearing Granted →Refer to State Office Administrative Hearings
→ Back For Commission Decision
Commission: Issues, Modifies, Denies, Remands Permit