Ventura County Air Pollution Control District
Title V Operating Permit Program Evaluation

Final Report

August 25, 2017

Conducted by the

U.S. Environmental Protection Agency
Region 9
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Acknowledgments

EPA Region 9 acknowledges the cooperation of the staff and management of the Ventura County Air Pollution Control District (VCAPCD), including the Office of Engineering, Office of Compliances, Office of Administration, and Office of County Counsel. We appreciate their willingness to respond to information requests and share their experiences regarding the development and implementation of VCAPCD's title V program.

Glossary of Acronyms and Abbreviations

Act	Clean Air Act [42 U.S.C. Section 7401 et seq.]
Agency	U.S. Environmental Protection Agency
ATC	Authority to Construct
APCD	Air Pollution Control District
CAA	Clean Air Act [42 U.S.C. Section 7401 et seq.]
CAM	Compliance Assurance Monitoring
CAPCOA	California Air Pollution Control Officers Association
CARB	California Air Resources Board
CEMS	Continuous Emissions Monitoring System
CFR	Code of Federal Regulations
COMS	Continuous Opacity Monitoring System
District	South Coast Air Quality Management District
EJ	Environmental Justice
EPA	U.S. Environmental Protection Agency
FCE	Full Compliance Evaluation
FPS	Facility Permit System
MACT	Maximum Achievable Control Technology
NAAQS	National Ambient Air Quality Standard
NESHAP	National Emission Standards for Hazardous Air Pollutants, 40 CFR Parts 61 & 63
NOV	Notice of Violation
NOx	Nitrogen Oxides
NSPS	New Source Performance Standards, 40 CFR Part 60
NSR	New Source Review
OIG	EPA Office of Inspector General
PEETS	Permits Engineering Enforcement Tracking System
PM	Particulate Matter
PM_{10}	Particulate Matter less than 10 micrometers in diameter
$PM_{2.5}$	Particulate Matter less than 2.5 micrometers in diameter
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
PTO	Permit to Operate
SIP	State Implementation Plan
SO_2	Sulfur Dioxide
SOB	Statement of Basis
VCAPCD	Ventura County Air Pollution Control District

Executive Summary

In response to the recommendations of a 2002 Office of Inspector General (OIG) audit, the Environmental Protection Agency (EPA or we) has re-examined the ways it can improve state and local title V operating permit programs and expedite permit issuance. Specifically, the EPA developed an action plan for performing program reviews of title V operating permit programs for each air pollution control agency beginning in fiscal year 2003. The purpose of these program evaluations is to identify good practices, document areas needing improvement, and learn how the EPA can help the permitting agencies improve their performance.

EPA Region 9 oversees 45 air permitting authorities with title V operating permit programs. Of these, 43 are state or local authorities with programs approved pursuant to part 70 (35 in California, three in Nevada, four in Arizona, and one in Hawaii). EPA Region 9 also oversees a delegated part 71 permitting program in Navajo Nation and a part 69 permitting program in Guam. Because of the significant number of permitting authorities, Region 9 has committed to performing, on an annual basis, one comprehensive title V program evaluation of a permitting authority with 20 or more title V sources. This approach will cover about 85% of the title V sources in Region 9 once the EPA completes evaluation of those programs.

Region 9 recently conducted a title V program evaluation of the Ventura County Air Pollution Control District (VCAPCD), whose permitting jurisdiction includes sources located in Ventura County, California. Our evaluation of VCAPCD is the twelfth title V program evaluation Region 9 has conducted. The first eleven were conducted at permitting authorities in Arizona, Nevada, California, and Hawaii. The EPA Region 9 program evaluation team for this evaluation consisted of the following EPA personnel: Matt Lakin, Acting Deputy Air Division Director; Gerardo Rios, Chief of the Air Permits Office; Ken Israels, Program Evaluation Advisor; Sheila Tsai, Program Evaluation Coordinator; and Lisa Beckham, Air Permits Office Program Evaluation team member.

The evaluation was conducted in four stages. At the first stage, the EPA sent VCAPCD a questionnaire focusing on title V program implementation in preparation for the site visit at VCAPCD's offices (See Appendix B, Title V Questionnaire and VCAPCD Responses). During the second stage of the program evaluation, Region 9 conducted an internal review of the EPA's own set of VCAPCD title V permit files. The third stage of the program evaluation was a site visit, which consisted of Region 9 representatives visiting VCAPCD office, located in Ventura, CA, to interview District staff and managers. The site visit took place January 17-19, 2017. The fourth stage of the program evaluation involved follow-up and clarification of issues for completion of the draft report.

Based on Region 9's program evaluation of VCAPCD, we conclude that VCAPCD implements a sophisticated program, with very experienced staff and management. We have also identified certain areas for improvement. Major findings from our report are listed below:

1. Finding: VCAPCD uses an electronic database to track and prepare title V permits effectively. The District has managed to implement a complete title V program for all its title V sources

using PEETS. (Finding 2.4)

2. Finding: VCAPCD's Statements of Basis consistently describe regulatory and policy issues thoroughly and clearly document the District's permitting decisions. (Finding 2.6)

3. Finding: VCAPCD successfully implements the CAM requirements. (Finding 3.1)

4. Finding: VCAPCD should define "routine surveillance" to make the permit conditions practically enforceable. (Finding 3.2)

5. Finding: VCAPCD provides public notices and other meaningful information of its draft and some final title V permitting actions on its website. However, VCAPCD does not provide online access to the current final version of its title V permits. (Finding 4.1)

6. Finding: VCAPCD could provide more information to the public regarding the right to petition the EPA Administrator to object to a title V permit. (Finding 4.3)

7. Finding: Ventura County contains a significant number of linguistically isolated communities for which VCAPCD uses innovative means to identify translation needs. (Finding 4.4)

8. Finding: VCAPCD generally uses a concurrent process for public comment and the EPA's 45-day review, but has used a sequential process when it has received "significant" comments. The determination for when to conduct a sequential review should be reconsidered. (Finding 4.5)

9. Finding: VCAPCD has no permit backlog and issues initial and renewal permits in a timely manner. (Finding 5.1)

10. Finding: VCAPCD permitting and compliance management communicate well and meet routinely to discuss programmatic issues. (Finding 6.2)

11. Finding: VCAPCD tracks both revenue and expenses associated with the implementation of the title V permitting program. (Finding 7.3)

Our report provides a series of findings (in addition to those listed above) and recommendations that should be considered in addressing our findings. As part of the program evaluation process, we gave VCAPCD an opportunity to review these findings and areas of improvements on June 16, 2017, when we emailed an electronic copy of the draft report to VCAPCD for comment.

The EPA received VCAPCD's response, which included comments on the draft report, on July 11, 2017 (See Appendix F). Based on the comments received from VCAPCD, the EPA revised the discussion and recommendation for one finding in the final report. Finding 3.2, which discusses the use of "routine surveillance" by VCAPCD for their title V permit conditions, was modified in the final report. Findings

2.1, 2.2, and 2.4 were also modified to accurately reflect the functions of VCAPCD's electronic database.

We will work with VCAPCD to address the remaining issues as necessary.

1. Introduction

Background

In 2000, the U.S. EPA's Office of Inspector General (OIG) initiated an evaluation on the progress that the EPA and state and local agencies were making in issuing title V permits under the Clean Air Act (CAA or the Act). The purpose of OIG's evaluation was to identify factors delaying the issuance of title V permits by selected state and local agencies and to identify practices contributing to timely issuance of permits by those same agencies.

After reviewing several selected state and local air pollution control agencies, OIG issued a report on the progress of title V permit issuance by the EPA and states.[1] In the report, OIG concluded that the key factors affecting the issuance of title V permits included (1) a lack of resources, complex EPA regulations, and conflicting priorities contributed to permit delays; (2) EPA oversight and technical assistance had little impact on issuing title V permits; and (3) state agency management support for the title V program, state agency and industry partnering, and permit writer site visits to facilities contributed to the progress that agencies made in issuing title V operating permits.

OIG's report provided several recommendations for the EPA to improve title V programs and increase the issuance of title V permits. In response to OIG's recommendations, the EPA made a commitment in July 2002 to carry out comprehensive title V program evaluations nationwide. The goals of these evaluations are to identify where the EPA's oversight role can be improved, where air pollution control agencies are taking unique approaches that may benefit other agencies, and where local programs need improvement. The EPA's effort to perform title V program evaluations for each air pollution control agency began in fiscal year 2003.

On October 20, 2014, the EPA's Office of Inspector General issued a report, "Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues", that recommended, in part, that the EPA: establish a fee oversight strategy to ensure consistent and timely actions to identify and address violations of 40 CFR Part 70; emphasize and require periodic reviews of title V fee revenue and accounting practices in title V program evaluations; and pursue corrective actions, as necessary.[2]

EPA Region 9 oversees 43 separate air permitting authorities with approved title V programs (35 in California, three in Nevada, four in Arizona, and one in Hawaii). Due to the significant number of permitting authorities, Region 9 has committed to performing one comprehensive title V program evaluation of a permitting authority with 20 or more title V sources every year. This approach would

[1] See Report No. 2002-P-00008, Office of Inspector General Evaluation Report, AIR, EPA and State Progress In Issuing title V Permits, dated March 29, 2002.

[2] See EPA's Office of Inspector General report, "Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues", Report No. 15-P-0006, dated October 20, 2014, which can be found on the internet at https://www.epa.gov/sites/production/files/2015-09/documents/20141020-15-p-0006.pdf .

cover about 85% of the title V sources in Region 9 once the EPA completes evaluation of those programs.

History of Stationary Source Permitting in California

The State of California has been engaged in efforts to improve air quality for more than 60 years. The California Air Pollution Control Act of 1947 authorized the creation of an Air Pollution Control District in every county of the state. That same year, the Los Angeles County Air Pollution Control District, the first air agency in the nation and the predecessor of today's South Coast Air Quality Management District, was created. Los Angeles County APCD established the first permitting requirements for industrial sources of air pollution.

With the passage of the 1970 CAA amendments and subsequent amendments in 1977, the federal government provided the foundation for the current national strategy for reducing air pollution. The 1970 Act set national ambient air quality standards (NAAQS) for non-hazardous pollutants and made states responsible for attaining and implementing the standards through State Implementation Plans (SIPs). In addition, the Act required ambient air quality modeling, transportation control measures, and new source review (NSR) programs that required new stationary sources of air pollution, and existing sources making significant modifications, to install control technology to reduce emissions.

The 1990 CAA amendments expanded the federal permitting requirements to add ozone nonattainment classifications (marginal, moderate, serious, severe, extreme), corresponding offset ratios for the NSR program, and the title V permit program for major stationary sources.

The over-arching goal of the title V program is to improve major stationary source compliance with all applicable federal CAA requirements. This is achieved by requiring states to develop and implement federal operating permit programs pursuant to title V of the CAA, and sources to obtain title V permits containing all their applicable CAA requirements. By this time VCAPCD, like many other air pollution control districts in California, already had a permitting program in place that included the issuance of two types of permits. The Authority to Construct (ATC) permit, issued prior to construction of the source or emission unit, typically contains conditions required for the construction and initial operation of the source or emission unit. The ATC permit is then converted to a Permit to Operate (PTO) after construction is completed and operation of the source or emission unit has commenced. During the conversion from ATC to PTO, certain ATC permit conditions were not retained in the PTO if the ATC conditions were determined to be obsolete or irrelevant because they were construction related. Furthermore, since these operating permits are linked to fee payment and renewed annually, new permit conditions were added or revised each year as new rules became applicable. Unlike the new title V program, these local operating permits were not required to contain all CAA applicable requirements.

Soon after the federal title V permit program was created, the California Air Resources Board (CARB) and many air districts in the State told the EPA that the title V program was duplicative of the existing local programs, and did not always integrate well with these programs. In light of this, California (and

other States) and the EPA began a lengthy process to develop guidance on how best to implement the required federal title V program in states with existing, mature permitting programs. These discussions resulted in several implementation guidance documents, including two "White Papers."

The first white paper, *White Paper for Streamlined Development of Part 70 Permit Applications* developed nationally with input from CARB and California districts, addresses the development of Part 70 applications, and includes a discussion of federal enforceability, obsolete ATC permit conditions, and the simultaneous revision of NSR permits and issuance of title V permits.

California air districts and CARB, via the California title V Implementation Working Group, provided key leadership in the development of the second white paper, *White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program*. The districts were instrumental in raising and resolving many of the permitting issues that were arising in the state, such as the streamlining of multiple overlapping applicable requirements.

Other important topics that the EPA and the California air districts discussed during this period included periodic monitoring and permit processing. These discussions resulted in the issuance of two additional implementation guidance documents specific to California agencies. First, a guidance document was developed by the EPA, CARB, and the California Air Pollution Control Officers' Association (CAPCOA), with VCAPCD participation, in 1999 to provide periodic monitoring recommendations for generally applicable SIP emission limits. Also in 1999, the EPA and CAPCOA reached agreement on several title V permit processing issues, including required Statement of Basis (SOB) elements. The EPA has issued guidance on the required content of statements of basis on several occasions. This guidance has consistently explained the need for permitting authorities to produce SOB with sufficient detail to document their decisions in the permitting process. Appendix C of this report contains a summary of the EPA guidance to date on the suggested elements in the SOB.

Chapters 2 through 8 of this report contain the EPA's findings regarding implementation of the title V permit program by VCAPCD. The EPA believes that the history of collaborative efforts among the EPA, CAPCOA, and CARB described above has resulted in clearer and more enforceable federal title V permits in California. The EPA and air agencies in California may benefit from continuing a dialog on the title V implementation issues discussed in this report.

Title V Program Evaluation at Ventura Air Pollution Control District

EPA Region 9's evaluation of VCAPCD's title V program is the twelfth such evaluation conducted by Region 9. The first eleven evaluations were conducted at permitting authorities in Arizona, Nevada, California, and Hawaii. The VCAPCD program evaluation team includes: Matt Lakin, Acting Deputy Air Division Director; Gerardo Rios, Chief, Air Permits Office; Ken Israels, Program Evaluation Advisor; Sheila Tsai, Program Evaluation Coordinator; and Lisa Beckham, Air Permits Office Program Evaluation team member.

The objectives of the evaluation were to assess how VCAPCD implements its title V permitting program, evaluate the overall effectiveness of VCAPCD's title V program, identify areas of VCAPCD's title V program that need improvement, identify areas where the EPA's oversight role can be improved, and highlight the unique and innovative aspects of VCAPCD's program that may be beneficial to transfer to other permitting authorities. The evaluation was conducted in four stages. In the first stage, the EPA sent VCAPCD a questionnaire focusing on title V program implementation in preparation for the site visit to the VCAPCD office. (See Appendix B, Title V Questionnaire and VCAPCD Responses.) The title V questionnaire was developed by the EPA nationally and covers the following program areas: (1) Title V Permit Preparation and Content; (2) General Permits; (3) Monitoring; (4) Public Participation and Affected State Review; (5) Permit Issuance/Revision/Renewal Processes; (6) Compliance; (7) Resources & Internal Management Support; and (8) Title V Benefits.

During the second stage of the program evaluation, Region 9 conducted an internal review of the EPA's own set of VCAPCD title V permit files. VCAPCD submits title V permits to Region 9 in accordance with its EPA-approved title V program and the Part 70 regulations. Region 9 maintains title V permit files containing these permits along with copies of associated documents, permit applications, and correspondence.

The third stage of the program evaluation included a site visit to the VCAPCD offices in Ventura, CA to conduct further file reviews, interview VCAPCD staff and managers, and review the District's permit-related databases. The purpose of the interviews was to confirm the responses in the completed questionnaire and to ask clarifying questions. The site visit took place January 17-19, 2017.

The fourth stage of the program evaluation was follow-up and clarification of issues for completion of the draft report. Region 9 compiled and summarized interview notes and made follow-up phone calls to clarify Region 9's understanding of various aspects of the title V program at VCAPCD.

VCAPCD Description

The VCAPCD was formed by the Ventura County Board of Supervisors in 1968. Currently, Ventura County does not meet the 2008 8-hour federal air quality standard for ozone. It also exceeds the state standards for ozone and particulate matter. With over 800,000 county residents, VCAPCD's mission statement is:

> "To protect public health and agriculture from the adverse effects of air pollution by identifying air pollution problems and developing a comprehensive program to achieve and maintain state and federal air quality standards."[3]

VCAPCD has a staff of about fifty employees including inspectors, engineers, planners, technicians, and support staff. VCAPCD is divided into eight divisions: Administrative Services, Compliance, Engineering,

[3] From Mission Statement posted on VCAPCD website: http://www.vcapcd.org/index.htm

Rule Development & Incentive Programs, Information Services, Monitoring, Planning and Evaluation, and Public Information.[4] Stationary source operating permits, including title V permits, are issued by the Engineering Division. Compliance and enforcement activities, such as facility inspections and source testing, and preparing enforcement cases are handled by the Compliance Division.

The Engineering Division is managed by an Engineering Manager, with work duties divided into two primary groups: (1) Permit Processing and (2) Air Toxics and Permit Renewal. The Permit Processing group is responsible for all permitting work including title V permits. The group consists of three Air Quality Engineers and one Permit Processing Specialist. The Air Toxics and Permit Renewal group focuses on annual permit renewals and California's Air Toxics "Hot Spots" Information and Assessment Act. The group consists of one Supervisor, one Permit Processing Specialist, and one Management Assistant.[5] The Permit Processing group does all title V related permitting work.

The VCAPCD Title V Program

VCAPCD implements its title V program through VCAPCD Regulation 33 (Rules 33-33.10). The EPA granted interim approval to VCAPCD's title V program on November 1, 1995, effective December 1, 1995,[6] and full approval on December 7, 2001, effective November 30, 2001.[7]

Part 70, the federal regulation that contains the title V program requirements that states must incorporate into their own title V program, requires that a permitting authority take final action on each permit application within 18 months after receipt of a complete permit application. The only exception is that a permitting authority must take action on an application for a minor modification within 90 days of receipt of a complete permit application.[8] VCAPCD's local rules regarding title V permit issuance contain the same timeframes as Part 70.[9]

Currently, there are 23 sources in Ventura County that are subject to the title V program. The District has sufficient permitting resources, and processes title V permit applications in a timely manner. VCAPCD has not had a title V permitting backlog since their program was first adopted and approved.

[4] From VCAPCD website: http://www.vcapcd.org/about.htm
[5] From VCAPCD website: http://www.vcapcd.org/engineering_division.htm
[6] 60 FR 55460 (November 1, 1995).
[7] 66 FR 63503 (December 7, 2001).
[8] See 40 CFR 70.7(a)(2) and 70.7(e)(2)(iv).
[9] See VCAPCD Regulation II, Rule 33.5.

The EPA's Findings and Recommendations

The following sections include a brief introduction, and a series of findings, discussions, and recommendations. The findings are grouped in the order of the program areas as they appear in the title V questionnaire.[10]

The findings and recommendations in this report are based on the EPA's internal file reviews performed prior to the site visit to VCAPCD, the District's responses to the title V Questionnaire, interviews and file reviews conducted during the January 17-19, 2017 site visit, and follow-up E-mails and phone calls made since the site visits.

[10] This report does not include a section on General Permits, which is covered in the questionnaire, because VCAPCD does not issue General Permits as part of its title V program.

2. Permit Preparation and Content

The purpose of this section is to evaluate the permitting authority's procedures for preparing title V permits. The requirements of title V of the CAA are codified in 40 CFR Part 70. The terms "title V' and "Part 70" are used interchangeably in this report. Part 70 outlines the necessary elements of a title V permit application under 40 CFR 70.5, and it specifies the requirements that must be included in each title V permit under 40 CFR 70.6. Title V permits must include all applicable requirements, as well as necessary testing, monitoring, recordkeeping, and reporting requirements sufficient to ensure compliance with the terms and conditions of the permit.

2.1 **Finding:** VCAPCD has a quality assurance process for reviewing draft versions of permits before they are made available for public and EPA review.

Discussion: VCAPCD engineering staff and managers indicate that all draft title V permits are thoroughly reviewed by the engineering manager before they are proposed for public and EPA review. VCAPCD has developed standard permit conditions that have been inputted into VCAPCD's Permits Engineering Enforcement Tracking System (PEETS), and updates PEETS as new regulations are introduced. The permit engineers can input equipment and process information into PEETS, then PEETS will automatically generate applicable template conditions to ensure consistency from permit to permit. In addition, permitting staff can add site-specific numbers and conditions as applicable. Once a permit engineer completes the draft permit, the engineering manager reviews the permit for completeness, accuracy, and approval.

During interviews, staff and managers also stated that compliance staff are not involved in routine quality assurance review of the draft permit review, but permitting staff consult with the compliance staff on a regular basis given their routine interaction with facilities during site inspections. Interaction with compliance can enhance the enforceability of a permit. During the interviews, we were given an example of compliance staff suggesting permit conditions to engineering staff that in turn improved the permit and compliance.

Recommendation: VCAPCD should continue its quality assurance practices.

2.2 **Finding:** VCAPCD maintains policy and guidance documents developed to provide direction for several elements of permit writing.

Discussion: As mentioned in Finding 2.1, VCAPCD standard permit conditions are developed and entered into PEETS. PEETS automatically generates appropriate permit conditions based on information entered by permit writers. VCAPCD refers to these standard permit conditions as an "Attachment." Each permit "Attachment" contains an "Applicability" section that explains what goes into the permit and what conditions are applicable. VCAPCD has developed guidance for using PEETS to generate permit conditions to ensure consistency.

VCAPCD also developed "CAM Plan Instructions" guidance regarding monitoring. VCPACD follows CAPCOA monitoring guidance approved by EPA Region 9, EPA compliance assurance monitoring (CAM) guidance,[11], and "EPA Region IX Title V Permit Review Guidelines."
Recommendation: We encourage VCAPCD to continue to implement the practice of writing template conditions and maintain their standards of consistency and accuracy. We also encourage VCAPCD to continue to follow appropriate guidance regarding monitoring requirements.

2.3 **Finding:** VCAPCD staff have a clear understanding of, and the ability to correctly implement, the various title V permit revision tracks pursuant to District and federal regulations.

Discussion: VCAPCD Rule 33.1 – Part 70 Permits - Definitions, contains clear definitions for Administrative, Minor, and Significant Title V revisions. The EPA has found that VCAPCD Regulation 33 rules are consistent with federal title V definitions and requirements pursuant to 40 CFR Part 70. The permit engineers follow the Rule 33.1 definitions as guidance to determine which of the title V permit tracks applies to a permit revision. Their determination is also verified by the engineering manager during the review process. VCAPCD's understanding of the criteria for classifying title V revisions allow for effective processing of title V permit changes. During the EPA's 45-day review, the EPA has not had to comment on VCAPCD's title V revision classification.
Recommendation: VCAPCD should continue to ensure Engineering staff successfully implement and categorize title V permit actions.

2.4 **Finding:** VCAPCD uses an electronic database to track and prepare title V permits effectively. The District has managed to implement a complete title V program for all its title V sources using PEETS.

Discussion: VCAPCD's PEETS is a detailed permit processing database developed by the District. The data in PEETS contains facility information, compliance inspection, permits, permit conditions, and all emissions calculations. In addition, as discussed in Findings 2.1 and 2.2, PEETS generates a permit "Attachment" based on data input to ensure permit consistency. VCAPCD also maintains a separate Microsoft Access database that is used for permit application tracking. It can generate customized reports pulling information from PEETS that contain information such as application submittal date, supplemental submittal date(s), permittee response date, complete date, issuance date, invoices, employee time, and emission reduction credits (ERCs).

During our site visit, VCAPCD demonstrated the database's flexibility and utility in retrieving critical information related to specific title V permits. However, PEETS is running on outdated

[11] https://www.epa.gov/air-emissions-monitoring-knowledge-base/compliance-assurance-monitoring

Windows operating systems and is not compatible with newer operating systems. This outdated aspect of PEETS could result in potential data loss due to lack of technical and security support for old operating systems. Though outdated, most managers and staff believe PEETS fulfill the requirements for what they need; however, they also noted that modernizing the database could potentially make it more efficient. During the site visit, VCAPCD stated that they are in the process of modernizing PEETS and related databases. Such a modernization effort could represent an opportunity to incorporate application and permit documents in the database.

Recommendation: The EPA commends VCAPCD for directing resources to build and upgrade a well-structured database that provides a variety of tools for effectively implementing the title V program. The EPA encourages VCAPCD to devote the necessary resources to upgrade its system to avoid potential problems in the future.

2.5 **Finding:** VCAPCD streamlines overlapping applicable requirements in title V permits. The District consistently identifies or documents its streamlining decisions, making it easy for the public and the EPA to determine if the final permit conditions assure compliance with the most stringent requirements.

Discussion: Streamlining is the process of integrating multiple overlapping requirements applicable to an emissions unit or process into a single set of requirements that will assure compliance with all the overlapping requirements.[12] Emissions units at a stationary source may be subject to various federal, state, and local requirements, which can result in a source being subject to multiple emission limits for the same pollutant, as well as multiple sets of monitoring, recordkeeping, and reporting requirements. While all the requirements are legally binding, some of these requirements may be redundant or incompatible. The streamlining process is generally intended to identify the most stringent set of requirements and establish them as permit conditions in the title V permit and to demonstrate compliance with less stringent applicable requirements. While the streamlining process is optional, and can be initiated by either the applicant or the permitting agency, the applicant must agree to its use.

During our file review, we noted that the District often streamlines multiple applicable requirements into a single set of permit conditions. The District often streamlines the applicable requirements from federal and District rules into a single set of permit conditions in which a single permit condition will assure compliance with multiple rules. VCAPCD followed the guidance of the EPA's White Papers. The most common VCAPCD streamlining example relates to gas turbines that are simultaneously subject to the BACT requirements of District

[12] A more detailed description of this process can be found in EPA's White Paper No. 2. https://www3.epa.gov/ttn/caaa/t5/memoranda/wtppr-2.pdf

Rule 26.2, "New Source Review – Requirements," District Rule 74.23, "Stationary Gas Turbines," NSPS GG or NSPS KKKK for gas turbines, Rule 54, "Sulfur Compounds," District Rule 64, "Sulfur Content of Fuels," and sometimes 40 CFR Part 64, "Compliance Assurance Monitoring".[13] The District clearly identifies these overlapping regulatory requirements in a chart and explains its determinations regarding how the listed permit conditions represent the most stringent of the applicable emission standards and monitoring, recordkeeping, and reporting requirements.

Recommendation: VCAPCD should continue to streamline overlapping applicable requirements and continue its practice of documenting its determinations thoroughly.

2.6 **Finding:** VCAPCD's Statements of Basis consistently describe regulatory and policy issues thoroughly and clearly document the District's permitting decisions.

Discussion: 40 CFR part 70 requires title V permitting authorities to provide "a statement that sets forth the legal and factual basis for the draft permit conditions" (40 CFR 70.7(a)(5)). The purpose of this requirement is to provide the public and the EPA with the District's rationale on applicability determinations and technical issues supporting the issuance of proposed title V permits. A Statement of Basis should document the regulatory and policy issues applicable to the source, and is an essential tool for conducting meaningful permit review.

The EPA has issued guidance on the required content of statements of basis on several occasions. This guidance has consistently explained the need for permitting authorities to produce statements of basis with sufficient detail to document their decisions in the permitting process. For example, the EPA Administrator's May 24, 2004 Order responding to a petition to the EPA to object to the proposed title V permit for the Los Medanos Energy Center includes the Administrator's response to Statement of Basis issues raised by the petitioners. The Order states:

"A statement of basis ought to contain a brief description of the origin or basis for each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from a straight recitation of requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring that is required under 40 CFR 70.6(a)(3)(i)(B)…Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and EPA a record of the applicability and technical issues surrounding the issuance of the permit." Order at 10.

Appendix C of this report contains a summary of the EPA guidance to date on the suggested elements in the Statements of Basis.

[13] See permits 00015, 00157, 00214, 01267, 01494, and 07891.

VCAPCD issues a combined Statement of Basis and title V permit. The EPA reviewed many VCAPCD title V permits and found that they sufficiently describe regulatory and policy issues and document decisions the District made in the permitting process. Typically, the first section of VCAPCD's permits, "Permit Cover Sheet," includes a subsection titled "Statement of Basis," as well as a source description, compliance history, a general description of equipment emissions and applicable requirements, a history of previous permitting actions, and information regarding periodic monitoring. In addition, VCAPCD also includes explanatory information and narrative statements throughout their permits to provide context and analysis to allow the public and EPA to follow the decision making underlying the permits. Based on our site visit interviews and permit reviews, we found that the District consistently addresses the need for periodic monitoring in title V permits and documents them in permit discussions.

Thus, overall we found that the information in the Permit Summary and Statement of Basis section to contain helpful information regarding the facility. In addition, VCAPCD includes additional information throughout the permit to document applicability and federal enforceability.

Recommendation: We commend VCAPCD's detailed Statement of Basis and decision documentation to support its title V permits. VCAPCD should continue this practice.

2.7 **Finding:** The District documents rationale/justification for minor permit revisions.

Discussion: As discussed in Finding 2.6, VCAPCD documents all permit revisions, including administrative and minor permit revisions in its Permit Revisions Table. The detailed emission calculation and decisions are documented in an accompanying memorandum. The memorandum for minor permit revisions typically includes the following topics: Facility Description and Application Description, Permitted Emissions, Best Available Control Technology (BACT) Analysis, Emission Offset Requirements, Rule Compliance, Rule 51 (Nuisance) Requirements for Toxic Emissions, and Public Notification Requirements. VCAPCD also includes a brief memorandum for administrative amendments.

Recommendation: VCAPCD should continue practice of thoroughly documenting its permit decisions.

2.8 **Finding:** The District generally incorporates applicable requirements into title V permits in an enforceable manner.

Discussion: A primary purpose of Title V is to provide each major facility with a single permit that ensures compliance with all applicable CAA requirements . To accomplish this purpose, permitting authorities must incorporate applicable requirements in sufficient detail such that the public, facility owners and operators, and regulating agencies can clearly understand which

requirements apply to the facility. These requirements include emission limits, operating limits, work practice standards, and monitoring, recordkeeping, and reporting provisions that must be enforceable as a practical matter.

Based on our review of the District's title V permits, VCAPCD generally incorporates applicable requirements into its title V permits with the appropriate level of detail. We did note, however, that requirements from 40 CFR part 60, subpart OOOO – *Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015* – does not appear to be incorporated in sufficient detail, which may result in enforceability issues.

The District's standard language for Subpart OOOO states: "This document summarizes the requirements of the NSPS and is not intended to supersede or conflict with the requirements of the NSPS." This phrase does not appear in the Applicability section of other Attachments and makes it unclear whether the permit conditions related to Subpart OOOO are enforceable. Additionally, several of the District's standard permit conditions for Subpart OOOO use the phrase "in general" to describe the applicable requirement, again questioning whether these conditions are enforceable.

Recommendation: VCAPCD should continue its good practice of incorporating requirements in sufficient detail to be practically enforceable. In addition, the District should update its standard language for Subpart OOOO in a manner consistent with other applicable requirements in the District's title V permits.

3. Monitoring

The purpose of this section is to evaluate the permitting authority's procedure for meeting title V monitoring requirements. Part 70 requires title V permits to include monitoring and related recordkeeping and reporting requirements. (See 40 CFR 70.6(a)(3).) Each permit must contain monitoring and analytical procedures or test methods as required by applicable monitoring and testing requirements. Where the applicable requirement itself does not require periodic testing or monitoring, the permit must contain periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit. As necessary, permitting authorities must also include in title V permits requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

Title V permits must also contain recordkeeping for required monitoring and require that each title V source record all required monitoring data and support information and retain such records for a period of at least five years from the date of the monitoring sample, measurement, report, or application was made. With respect to reporting, permits must include all applicable reporting requirements and require (1) submittal of reports of any required monitoring at least every six months and (2) prompt reporting of any deviations from permit requirements. All required reports must be certified by a responsible official consistent with the requirements of 40 CFR 70.5(d).

In addition to periodic monitoring, permitting authorities are required to evaluate the applicability of Compliance Assurance Monitoring (CAM), and include CAM provisions and a CAM plan into a title V permit when applicable. CAM applicability determinations are required either at permit renewal, or upon the submittal of an application for a significant title V permit revision. CAM regulations require a source to develop parametric monitoring for certain emission units with control devices, which may be required in addition to any periodic monitoring, to assure compliance with applicable requirements.

3.1 **Finding:** VCAPCD successfully implements the CAM requirements.

Discussion: The CAM regulations, codified in 40 CFR Part 64, apply to title V sources with large emission units that rely on add-on control devices to comply with applicable requirements. The underlying principle, as stated in the preamble, is "to assure that the control measures, once installed or otherwise employed, are properly operated and maintained so that they do not deteriorate to the point where the owner or operator fails to remain in compliance with applicable requirements" (62 FR 54902, October 22, 1997). Under the CAM approach, sources are responsible for proposing a CAM plan to the permitting authority that provides a reasonable assurance of compliance to provide a basis for certifying compliance with applicable requirements for pollutant-specific emission units (PSEU) with add-on control devices.
Based on interviews conducted during our site visit, we found that permit writers and managers at VCAPCD understand the purpose of the CAM rule. Interviewees consistently displayed knowledge of CAM applicability and permit content requirements. Of the total 23 VCAPCD title V permits, there are four title V permits with CAM monitoring: Permit #00036 for PM from kiln

with baghouse, #00041 and #01493 for NOx from rich burn engine with catalyst, and #01494 for NOx from gas turbine with catalyst. VCAPCD has created a very detailed publication – "CAM Plan Instructions" which provides a general discussion and summary of CAM requirements and applicability. These CAM Plan Instructions are used by both Permit holders and VCAPCD title V permit staff. In our review of District permits we found that the District generally explains CAM applicability correctly and adds appropriate monitoring conditions to title V permits for sources with PSEUs subject to CAM.

Recommendation: VCAPCD should continue to implement the CAM rule as it processes permit renewals and significant modifications.

3.2 **Finding:** VCAPCD should define "routine surveillance" to make the permit conditions practically enforceable.

Discussion: Practical enforceability for a source-specific permit will be achieved if the permit's provisions specify: (1) a technically-accurate limitation and the portion of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); and (3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting.[14]

Some VCAPCD permit "Attachments" we reviewed use the term "routine surveillance" without specifying what is meant by "routine". For example, the attachment for VCAPCD Rule 50, "Opacity" states that "[the] Permittee shall perform routine surveillance and visual inspections to ensure that compliance with Rule 50 is being maintained." VCAPCD should consider using a more specific time period such as daily, weekly, or monthly.

We also found similar issues with surface cleaning and degreasing, abrasive blasting and architectural coatings conditions.

The lack of specificity in the term "routine surveillance" may affect the practical enforceability of any permit conditions that include it.

Recommendation: VCAPCD should define "routine surveillance" to assure that the permit conditions are practically enforceable.

[14] *Guidance an Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits*, Kathie A. Stein, Director, Air Enforcement Division (January 25, 1995).

4. Public Participation and Affected State Review

This section examines VCAPCD procedures used to meet public participation requirements for title V permit issuance. The federal title V public participation requirements are found in 40 CFR 70.7(h). Title V public participation procedures apply to initial permit issuance, significant permit modifications, and permit renewals. Adequate public participation procedures must provide for public notice including an opportunity for public comment and public hearing on the draft permit, permit modification, or renewal. Draft permit actions must be noticed in a newspaper of general circulation or a State publication designed to give general public notice; to persons on a mailing list developed by the permitting authority; to those persons that have requested in writing to be on the mailing list; and by other means necessary to assure adequate notice to the affected public.

The public notice should, at a minimum: identify the affected facility; the name and address of the permitting authority processing the permit; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials, and all other materials available to the permitting authority that are relevant to the permit decision; a brief description of the required comment procedures; and the time and place of any hearing that may be held, including procedures to request a hearing (See 40 CFR 70.7(h)(2).

The permitting authority must keep a record of the public comments and of the issues raised during the public participation process so that the EPA may fulfill the Agency's obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted. The public petition process, 40 CFR 70.8(d), allows any person who has objected to permit issuance during the public comment period to petition the EPA to object to a title V permit if the EPA does not object to the permit in writing as provided under 40 CFR 70.8(c). Public petitions to object to a title V permit must be submitted to the EPA within 60 days after the expiration of the EPA 45-day review period. Any petition submitted to the EPA must be based only on comments regarding the permit that were raised during the public comment period, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

4.1 **Finding:** VCAPCD provides public notices and other meaningful information of its draft and some final title V permitting actions on its website. However, VCAPCD does not provide online access to the current final version of its title V permits.

Discussion: A permitting authority's website is a powerful tool to make title V information available to the general public. Information that would be useful for the public review process can result in a more informed public and, consequently, more meaningful comments during title V permit public comment periods.

The District website provides several useful links to provide information to the public and regulated community regarding the VCAPCD permitting program. [15] The public can find information regarding the permitting process, whether a permit is needed for an operation, how to obtain a permit, application forms, District permitting guidelines and policies, and information about related programs that inform the District's permitting program.
VCAPCD's website provides a list of title V sources and copies of draft permits under public comment periods;[16] however, it does not provide a copy of all the title V permits, title V permit applications, or other supporting information such as the public comment deadlines or deadlines for requesting a public hearing.
Although VCAPCD has a title V permit mailing list, VCAPCD's website does not include information regarding the mailing list or provide the public an opportunity to sign up for the mailing list online.
Recommendation: We recommend that the District continue to provide information through the various approaches currently used and include title V permit mailing list sign-up information on its website. We also recommend that the District provide the public with access to the final issued permit of all title V sources via its website.

4.2 **Finding:** The District receives public comments regarding high profile facilities.

Discussion: During our interviews and file reviews, we found that, of over approximately 100 title V newspaper notices, only two proposed permits received public comments. Both instances concerned high profile facilities and the public requested public hearings. The fact that the District granted the public hearing requests and created special project webpages indicates that the District has engaged in a mix of public outreach strategies regarding facilities of interest to the public.

Recommendation: VCAPCD should maintain its public involvement processes such as providing outreach and granting public hearings with respect to title V permitting.

4.3 **Finding:** VCAPCD could provide more information to the public regarding the right to petition the EPA Administrator to object to a title V permit.

Discussion: 40 CFR 70.8(d) and District Rule 33.7(D) provide that any person may petition the EPA Administrator, within 60 days of the expiration of the EPA's 45-day review period, to object to a title V permit. The petition must be based only on objections that were raised with reasonable specificity during the public comment period.[17]

[15] http://www.vcapcd.org/title_v.htm

[16] http://www.vcapcd.org/pubs/Engineering/permits2000/TitleV2000/Title-V-Sources-10-16.pdf

[17] An exception applies when the petitioner demonstrates that it was impracticable to raise those objections during the public comment period or that the grounds for objection arose after that period.

Even though District Rule 33.7(D) contains information about the public's right to petition the EPA Administrator to object to a title V permit, neither the District's draft and final permit packages, nor the public notice for the permit action inform the public of the right to petition the EPA Administrator to object to a title V permit.

Recommendation: The EPA recommends that VCAPCD revise its public notice information to inform the public of the right to petition the EPA Administrator to object to a title V permit during its public notice period.

4.4 **Finding:** Ventura County contains a significant number of linguistically isolated communities for which VCAPCD uses innovative means to identify translation needs.

Discussion: VCAPCD's jurisdiction includes sources located throughout Ventura County. VCAPCD identifies those communities that need translation services by working with community groups and members of the VCAPCD Air Pollution Control Board who represent a given community (this 10-member board consists of the County Board of Supervisors and five elected officials representing Ventura County cities.). VCAPCD's approach to translation services has been effective. The EPA prepared a map of linguistically isolated communities within VCAPCD's jurisdiction in which title V permits have been or may be issued (see Appendix D). Using a map like that found in Appendix D may provide additional opportunities to enhance and confirm the effectiveness of VCAPCD's translation efforts.

Recommendation: The EPA recommends that VCAPCD continue its focus on providing translation services. VCAPCD should consider enhancing translation efforts by using mapping tools as appropriate to assure updated information.

4.5 **Finding:** VCAPCD generally uses a concurrent process for public comment and the EPA's 45-day review, but has used a sequential process when it has received "significant" comments. The determination for when to conduct a sequential review should be reconsidered.

Discussion: Per section 505(b) of the CAA and 40 CFR 70.10(g), state and local permitting agencies are required to provide proposed title V permits to the EPA for a 45-day period during which the EPA may object to permit issuance. The EPA regulations allow the 45-day EPA review period to either occur following the 30-day public comment period (i.e. sequentially), or at the same time as the public comment period (i.e., concurrently). When occurring sequentially, permitting agencies will first put the draft permit[18] out for public comment, and following the close of public comment, provide the proposed permit and supporting documents to the EPA.[19] When occurring concurrently, a state or local agency will provide the EPA with the draft permit

[18] Per 40 CFR 70.2, "draft permit" is the version of a permit for which the permitting authority offers public participation or affected State review.

[19] Per 40 CFR 70.2, "proposed permit" is the version of a permit that the permitting authority proposes to issue and forwards to the EPA for review. In many cases these versions will be identical; however, in instances where the permitting agency makes edits or revisions as a result of public comments, there may be material differences between the draft and proposed permit.

and supporting documents at the beginning of the public comment period, so that both periods start at the same time.

VCAPCD's general practice is to conduct a concurrent public and EPA review, which allows the EPA at most 15 days to review any public comments and VCAPCD's response. Public comments and response to comments are considered part of the supporting information for each permit action. In practice, it is challenging for the District to respond to comments and provide the responses to the EPA with sufficient time for EPA review, particularly for permitting actions with significant public interest.

VCAPCD's questionnaire response states that if there is significant public comment on a proposed permit, both the public and the EPA would be provided with a copy of the revised proposed permit, and VCAPCD would start a new 45-day EPA review period.[20] However, during our discussions with VCAPCD, both agencies realized that if VCAPCD does not consider the public comment significant, the EPA would not receive comments or be able to consider their significance.

Recommendation: VCAPCD should continue its practice to prepare a response to comments, make any necessary revisions to the permit or permit record, and resubmit the proposed permit and other required supporting information to restart the EPA review period. VCAPCD has also committed to providing all comments to the EPA and conducting a second EPA 45-day review if any public comments are received. To facilitate timely issuance of permits, the EPA and VCAPCD agreed to coordinate these review periods so that we can expedite our review when feasible.

[20] District Rules 33.7(C)(2) and 33.7(C)(3) require VCAPCD to provide a revised, proposed permit to EPA for additional review if revisions are made to the proposed permit.

5. Permit Issuance / Revision / Renewal

This section focuses on the permitting authority's progress in issuing initial title V permits and the District's ability to issue timely permit renewals and revisions consistent with the regulatory requirements for permit processing and issuance. Part 70 sets deadlines for permitting authorities to issue all initial title V permits. The EPA, as an oversight agency, is charged with ensuring that these deadlines are met as well as ensuring that permits are issued consistent with title V requirements. Part 70 describes the required title V program procedures for permit issuance, revision, and renewal of title V permits. Specifically, 40 CFR 70.7 requires that a permitting authority take final action on each permit application within 18 months after receipt of a complete permit application, except that action must be taken on an application for a minor modification within 90 days after receipt of a complete permit application.[21]

5.1 **Finding:** VCAPCD has no permit backlog and issues initial and renewal permits in a timely manner.

Discussion: VCAPCD has issued 30 initial title V permits since it began implementing its title V program (including 5 facilities that subsequently became synthetic minors and 2 that ceased operation). The District's depth of knowledge and internal procedures produced a solid record of timely permit issuance.
The District has issued more than 80 renewal permits and is currently working on 1 renewal permit. The District does not anticipate any delays in processing renewal applications.
Recommendation: The District should continue the practices that allow it to process title V permits in a timely manner.

5.2 **Finding:** District Rule 35, "Elective Emission Limits," allows sources to voluntarily limit their potential to emit to avoid title V applicability.

Discussion: A source that would otherwise have the potential to emit (PTE) a given pollutant that exceeds the major source threshold for that pollutant can accept a voluntary limit (a "synthetic minor" limit) to maintain its PTE below the applicable threshold and avoid major New Source Review and/or the title V program. The most common way for sources to establish such a limit is to obtain a synthetic minor permit from the local permitting authority.

Synthetic minor limits must be both legally enforceable and enforceable as a practical matter.[22] According to the EPA guidance, for emission limits in a permit to be practically enforceable, the permit provisions must specify: 1) a technically-accurate limitation and the portions of the

[21] See 40 CFR 70.7(a)(2) and 70.7(e)(2)(iv).
[22] *Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)*, John S. Seitz, Director, Office of Air Quality Planning and Standards (January 25, 1995).

source subject to the limitations; 2) the time period for the limitation; and 3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting. [23]

In response to a petition regarding the Hu Honua Bioenergy Facility, the EPA stated that synthetic minor permits must specify: 1) that all actual emissions at the facility are considered in determining compliance with its synthetic minor limits, including emission during startup, shutdown, malfunction or upset; 2) that emissions during startup and shutdown (as well as emission during other non-startup/shutdown operating conditions) must be included in the semi-annual reports or in determining compliance with the emission limits; 3) how the facility's emissions shall be determined or measured for assessing compliance with the emission limits.[24]

District Rule 35 allows major sources to voluntarily limit their PTE to below major source thresholds to avoid the requirement to obtain a title V permit. Title V sources are required to demonstrate that their PTE is permanently reduced either through a facility modification or by accepting an enforceable permit condition to limit the PTE to levels below the title V major source emission thresholds specified in District Rule 33.

At our request, VCAPCD provided us with four examples of synthetic minor permits.[25] Our review indicates that the example permits meet the EPA standards for practical enforceability. For example, each of the example permits contained requirements for the source to monitor hours of operation, material usage amount, and criteria pollutant emission rates. The sources were required to track, record, and maintain records of their emissions on at least a monthly basis to demonstrate that they have not exceeded major source thresholds. Some of the sources were required to monitor these parameters on an hourly or daily basis to demonstrate compliance, depending on the individual source's types of operation. All the permits contained information on what part of the source's operation were required to comply with the specific emission limits.

Recommendation: The District should continue issuing synthetic minor permits as needed with requirements that ensure sources' emissions are below applicable major source thresholds. VCPACD should also consider the criteria from the Hu Honua petition response in future synthetic minor permits.

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[23] *Guidance an Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits*, Kathie A. Stein, Director, Air Enforcement Division (January 25, 1995).

[24] *Order Responding to Petitioner's Request that the Administrator Object to Issuance of State Operating Permit Petition No. IX-2011-1*, Gina McCarthy, Administrator (February 7, 2014).

[25] The four permits included the following types of facilities: a vegetable growing operation and packaging line; a gas processing facility; an electric power generation plant; and an oil production source that includes wells, storage, tanks, loading operations, engines, boilers, glycol dehydrators, sumps, and emergency flares.

6. Compliance

This section addresses VCAPCD practices and procedures for issuing title V permits that ensure permittee compliance with all applicable requirements. Title V permits must contain sufficient requirements to allow the permitting authority, the EPA, and the general public to adequately determine whether the permittee complies with all applicable requirements.

Compliance is a central priority for the title V permit program. Compliance assures a level playing field and prevents a permittee from gaining an unfair economic advantage over its competitors who comply with the law. Adequate conditions in a title V permit that assure compliance with all applicable requirements also result in greater confidence in the permitting authority's title V program within both the general public and the regulated community.

6.1 **Finding:** VCAPCD performs full compliance evaluations of all title V sources on an annual basis.

Discussion: The EPA's 2016 Clean Air Act Stationary Source Compliance Monitoring Strategy recommends that permitting authorities perform Full Compliance Evaluations (FCEs) for most title V sources at least every other year.[26] For the vast majority of title V sources, the EPA expects that the permitting authority will perform an on-site inspection to determine the facility's compliance status as part of the FCEs. During interviews, District inspectors reported that the District performs full compliance evaluations (including an on-site inspection) of all title V sources on an annual basis. The District utilizes PEETS to track application and permit issuance dates, compliance report deadlines, previous inspection dates, and inspection due dates.
Recommendation: The EPA commends VCAPCD for performing full compliance evaluations of all title V sources annually.

6.2 **Finding:** VCAPCD permitting and compliance management communicate well and meet routinely to discuss programmatic issues.

Discussion: As discussed in Finding 2.1, VCAPCD compliance staff are not involved in the review of draft title V permits as a matter of standard procedure. However, VCAPCD's compliance manager and engineering manager hold routine meetings to discuss permitting and compliance issues. Similarly, engineering staff indicated compliance staff are readily accessible if there were any questions regarding a source or a permit. During the interviews, we were given an example of compliance staff suggesting permit conditions to engineering staff that in turn improved the permit and compliance. In addition, engineering staff indicated that they receive access to facility inspection reports in their permit files.

[26] This document is available at: https://www.epa.gov/sites/production/files/2013-09/documents/cmspolicy.pdf.

Recommendation: The EPA commends VCAPCD for the good communication between permitting and compliance management and staff. We encourage VCAPCD to continue information sharing between engineering and compliance staff.

7. Resources and Internal Management

The purpose of this section is to evaluate how the permitting authority is administering its title V program. With respect to title V administration, the EPA's program evaluation: (1) focused on the permitting authority's progress toward issuing all initial title V permits and the permitting authority's goals for issuing timely title V permit revisions and renewals; (2) identified organizational issues and problems; (3) examined the permitting authority's fee structure, how fees are tracked, and how fee revenue is used; and (4) looked at the permitting authority's capability of having sufficient staff and resources to implement its title V program.

An important part of each permitting authority's title V program is to ensure that the permit program has the resources necessary to develop and administer the program effectively. In particular, a key requirement of the permit program is that the permitting authority establish an adequate fee program. Part 70 requires that permit programs ensure that title V fees are adequate to cover title V permit program costs and are used solely to cover the permit program costs. Regulations concerning the fee program and the appropriate criteria for determining the adequacy of such programs are set forth in 40 CFR 70.9.

7.1 **Finding:** District engineers and inspectors receive effective legal support from the County Counsel's office.

Discussion: The County Counsel's office represents and advises VCAPCD on air quality permitting and enforcement matters and typically participates in meetings at which VCAPCD meets with a permittee or others who have legal counsel. During our site visit, interviewees reported that they receive effective legal support from the County Counsel's office.

Recommendation: VCAPCD should continue to ensure that it receives effective legal support from the County Counsel's office.

7.2 **Finding:** The District has an effective electronic database for permits management.

Discussion: VCAPCD uses PEETS to manage their permits effectively. VCAPCD consistently updates the information in their database to keep it relevant and reliable. VCAPCD permits can be easily managed by running the various reports stated in Finding 2.4. The new PRISM database could represent an opportunity to update the library of permit conditions available in PEETS, as well as potentially incorporating actual application and permit documents in the database.

Recommendation: The EPA commends VCAPCD for devoting the resources to build and upgrade a well-structured database that provides a variety of tools for effectively implementing the title V program.

7.3 **Finding:** VCAPCD tracks both revenue and expenses associated with the implementation of the title V permitting program.

Discussion: During interviews with VCAPCD, the EPA learned that, prior to the 1990 CAAA, VCAPCD implemented its own permitting program. When the Part 70 requirements took effect, VCAPCD treated the Part 70 requirements as overlay to the existing VCAPCD permitting program. As a result of this approach, VCAPCD treated the revenue and expenses associated with the Part 70 program as supplemental to the revenue and expenses associated with the existing local permitting program. Thus, the combination of their base permitting program and the additional part 70 requirements that apply to title V sources result in the full program as implemented by VCAPCD. Using an approach based on full cost recovery, VCAPCD ensures that it collects fees for its base permitting program and the supplemental title V costs (including overhead, compliance costs, etc.) that match the expenses necessary for implementing the supplemental title V program requirements. See Appendix E for details regarding their accounting approach.

Recommendation: The EPA commends VCAPCD for their approach to accounting for both revenue and expenses for the implementation of the title V program.

7.4 **Finding:** District staff report that supervisors and management are available for one-on-one consultation on title V permitting issues

Discussion: With a small group of staff, both engineering and compliance managers are able to provide a lot of one-on-one training. The staff indicated that the managers are accessible if there are any title V permitting or compliance issues. Each issue can be evaluated on a case-by-case basis.

Recommendation: The EPA encourages VCAPCD to continue to provide one-on-one consultation on title V permitting issues.

7.5 **Finding:** The District provides training for its permitting staff.

Discussion: Based on our interviews, District staff indicated that in-house training (primarily one-on-one mentoring, for example) is provided. District staff also participate in the EPA's Air Pollution Training Institute (APTI) and CARB courses. The EPA's APTI primarily provides technical air pollution training to state, tribal, and local air pollution professionals, although others may

benefit from this training.[27] The curriculum is available in classroom, telecourse, self-instruction, and web-based formats. APTI provides training in a variety of areas including Entry-Level Training, Engineering, Ambient Monitoring, Inspections, and Permitting, among others. The CARB training program provides comprehensive education to further the professional development of environmental specialists. These courses cover pollution history, the procedures required to properly evaluate emissions, the analysis of industrial processes, theory and application of emission controls, and waste stream reduction.[28]

In Finding 7.7, we discuss the District's efforts to address succession planning. As the District considers the need to preserve institutional knowledge in succession planning, it may be useful to develop a standard written curriculum that identifies training that is essential for effective implementation of its permitting program. The preparation of a written curriculum that captures their already effective training approach may provide continuity as the District brings on new staff.

Recommendation: The District's current training program for permitting staff provides a solid foundation for effective permitting. In consideration of the District's succession planning efforts, the District should consider preparing a written curriculum to ensure implementation of a comprehensive title V training program.

7.6 **Finding:** The District would like to collaborate and coordinate with the EPA in addressing EJ issues.

Discussion: VCAPCD, as noted in finding 4.4, has identified and addressed issues associated with EJ in their translation efforts for the permitting program. During our interviews, the EPA learned that EJ-related permitting issues have arisen over the years and most recently have been identified during a power plant siting process administered by the California Energy Commission. When a potential EJ issue is identified, VCAPCD considers how best to meaningfully involve community members through the provision of translation and other outreach services. VCAPCD provided the EPA with examples of the District's efforts that resulted in substantive community comments leading to permit modifications that are more protective.
During our interviews, the District asked that the EPA provide assistance on EJ-related permitting issues.

[27] See http://www.epa.gov/air/oaqps/eog/course_topic.html for additional details.

[28] See http://www.arb.ca.gov/training/training.htm for additional details.

Recommendation: VCAPCD should continue to implement its EJ program and increase internal awareness among its engineering and compliance staff. The EPA will collaborate with VCAPCD at the District's request to provide assistance and training on environmental justice.

7.7 **Finding:** VCAPCD expects significant attrition in the next several years as a result of retirements and is therefore focusing on effective succession planning.

Discussion: VCAPCD has experienced very low turnover among its permitting staff and management over the years. Low turnover has resulted in a very experienced permitting group at the District, with a concentration of knowledge at the management level. The District acknowledges that a significant portion of its experienced staff and management will become eligible for retirement over the next several years. As a result of the upcoming retirements and other staff availability issues, the District is taking measures like fixed term hiring to bring on new employees as the more experienced employees begin to transition towards retirement with the hope of promoting knowledge transfer and mentoring while later being able to offer long term employment to those in fixed term positions. The District is also interested in ensuring that staff preserve current institutional knowledge and maintain the effectiveness of the title V program. Mentoring and training are key focus areas for VCAPCD to address succession planning. As noted in finding 7.5, VCAPCD has a training program and uses its more experienced management and staff to mentor newer less experienced staff. Where staff lack familiarity with particular permitting program elements like public hearing procedures, case-by-case determinations, or other areas that may be beyond their usual scope of work, there is a dependence on permitting management to stay up to date to ensure that these elements are effectively implemented. An alternative approach to these types of program areas may be to consider spreading that expertise among several key staff as well as permitting management to improve redundancy and to foster information sharing and to develop and preserve institutional knowledge.

Recommendation: The EPA commends VCAPCD for focusing on succession planning and agrees that it should develop a long term plan.

8. Title V Benefits

The purpose of this section is to evaluate how the permitting authority's existing air permitting and compliance programs have benefited from the administration of the permitting authority's title V program. The title V permit program is intended to generally clarify which requirements apply to a source and enhance compliance with any CAA requirements, such as NSPS or SIP requirements. The program evaluation for this section is focused on reviewing how the permitting authority's air permitting program changed as a result of title V, resulted in transparency of the permitting process, improved records management and compliance, and encouraged sources to pursue pollution prevention efforts.

8.1 **Finding:** The reporting requirements associated with having a title V permit have resulted in increased awareness and attention to compliance obligations on the part of regulated sources.

Discussion: Sources with title V permits are subject to reporting requirements that are not typically required by local permits, such as the requirement to submit annual compliance certifications and semiannual monitoring reports, as well as being subject to a full compliance evaluation annually. The District has observed increased awareness of compliance obligations at its title V sources.

During interviews, many staff stated that as a result of the title V program, sources have become more conscious of reporting requirements and deliver required title V reports (deviation reports, semi-annual monitoring reports, and annual compliance certifications) promptly. In addition, staff and managers indicated that title V facilities are more attentive to compliance issues, and are more likely to have dedicated staff to handle environmental work. Title V sources are more forthcoming through self-reporting of breakdowns and deviations, and look for ways to prevent them from recurring.

In the questionnaire, VCAPCD stated that the title V permit program has improved the quality of the VCAPCD Authority to Construct process through better, clearer, and more enforceable permit conditions and increased documentation in engineering analysis.

Recommendation: The EPA appreciates this feedback.

8.2 **Finding:** Some sources have accepted enforceable limits to reduce their potential emissions and thus avoid title V applicability.

Discussion: Some major sources avoid title V permitting by voluntarily accepting PTE limits that are less than the major source thresholds, resulting in reductions in potential emissions and, in some cases, in actual emissions. Compliance with VCAPCD's Rule 35, "Elective Emission Limits," sources can obtain a Part 70 permit with federally-enforceable elective emission limits.

Reduced emissions result in improvements to human health and the environment.

Recommendation: The EPA recommends that the District continue its practice of creating synthetic minor sources with practically and legally enforceable permit terms and conditions.

Appendix A. Air Pollution Control Agencies in California

CALIFORNIA MAP FOR LOCAL AIR DISTRICT WEBSITES

The State is divided into Air Pollution Control Districts (APCD) and Air Quality Management Districts (AQMD), which are also called air districts. These agencies are county or regional governing authorities that have primary responsibility for controlling air pollution from stationary sources. The following map is for informational purposes and shows the Air District Boundaries. This map can be used to access local air district websites or an email address for that district if there is no website.

Local Air District Resource Directory
California Air Pollution Control Officers Association (CAPCOA)
Other Maps on this Website

Appendix B. Title V Questionnaire and VCAPCD Responses

EPA

Title V Program Evaluation

Questionnaire

Ventura County Air Pollution Control District

VCAPCD Contact

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Contents

A. Title V Permit Preparation and Content

Y☐ N☒ **1. For those title V sources with an application on file, do you require the sources to update their applications in a timely fashion if a significant amount of time has passed between application submittal and the time you draft the permit?**

In general, we do not. The majority of our Title V permit modification applications are for small changes at large oil fields and not a long period of time passes from the date of permit application to the date of proposed / draft permit. For example, a typical permit modification application consists of adding or replacing oil wells or adding or replacing oilfield storage tanks at an existing oil field. Another example of a typical permit modification application would be adding or replacing emergency diesel engines at one of our three (3) Navy Bases. The applicant sees a draft of the permit changes and we would allow minor revisions between the draft permit and the final permit if necessary.

Y☐ N☒ **a. Do you require a new compliance certification?**

Not for the most common scenarios described above where there are no new applicable requirements. However, we do require a new compliance certification for a permit modification application if there are new federally-enforceable requirements that would apply to the stationary source. In addition, we do require a new compliance certification for Title V Reissuance Applications.

Y☒ N☐ **2. Do you verify that the source is in compliance before a permit is issued and, if so, how?**

Yes we do. In general, Title V non-compliance is not a problem. As noted below, Title V sources are inspected at least once per year by the VCAPCD Compliance Division. The VCAPCD permit and compliance database known as PEETS has a listing of all Notices to Comply and all Notices of Violation. PEETS also notes their status as pending or complete. In addition, the Compliance Division provides a copy of all variance applications and approved variances to the Engineering Division permit staff (which at any given time is a very low number). All Title V Permits include a compliance history report in the Statement of Basis known as "NOV by Facility".

a. In cases where a facility is either known to be out of compliance, or may be out of compliance (based on pending NOVs, a history of multiple NOVs, or other evidence

suggesting a possible compliance issue), how do you evaluate and document whether the permit should contain a compliance schedule? Please explain, and refer to appropriate examples of statements of basis written in 2005 or later in which the Department has addressed the compliance schedule question.

As discussed above, non-compliance is generally not a problem with the VCAPCD Title V permitting program. I know of no examples of compliance schedules written into a Title V Permit or Statement of Basis in 2005 or later.

3. **What have you done over the years to improve your permit writing and processing time?**

In general, the VCAPCD Title V application forms and Title V Permit format have not changed from the inception of the program. The permit format itself leads to improved permit processing and writing time as a modification application has limited changes to the Title V permit itself. The permit format also allows for easier Reissuance Applications. We do have an increasing number of templates for the review of Title V permit modification applications as a part of the Engineering Analysis that accompanies each Title V permit modification application. We also use templates for public notices, for cover letters to the applicant, and for cover letters to EPA. In addition, each Statement of Basis in a Title V Permit is dynamic in that additional details are usually added during each permit modification or permit reissuance.

Y☒ N☐ 4. **Do you have a process for quality assuring your permits before issuance? Please explain.**

The format of the permit itself leads to easier quality assurance. In addition, with a relatively small number of Title V Permits and Title V permit staff, the Engineering Division Manager is able to conduct a detailed review of each Title V permit modification application as a part of the approval and issuance process.

5. **Do you utilize any streamlining strategies in preparing the permit? Please explain.**

   a. **What types of applicable requirements does the Department streamline, and how common is streamlining in VCAPCD permits?**

Yes, the VCAPCD has incorporated streamlining into its Title V Permits. By far, the most common VCAPCD streamlining strategy is for gas turbines that are simultaneously subject to the BACT requirements of Rule 26.2, "New Source Review – Requirements", Rule 74.23, "Stationary Gas Turbines", NSPS GG or NSPS KKKK for gas turbines, Rule 54, "Sulfur Compounds", Rule 64, "Sulfur Content of Fuels", and sometimes 40 CFR Part 64, "Compliance Assurance Monitoring". There are approximately six (6) Title V Permits that utilize streamlining for gas turbines. These include Title V Permit Nos. 00015, 00157, 00214, 01267, 01494, and 07891.

b. Do you have any comments on the pros and cons of streamlining multiple overlapping applicable requirements? Describe.

In general, for our gas turbine streamlining strategy, I see only pros and not cons. The pro is that all applicable requirements are clearly listed in the streamlined permit conditions.

6. What do you believe are the strengths and weaknesses of the format of VCAPCD permits (i.e. length, readability, facilitates compliance certifications, etc.)? Why?

The strengths of the VCAPCD Title V Permits include their consistency. All permits follow the same format and include sections of different information. Another strength is the format itself. Table Nos. 2, 3, and 4 contain a wealth of information. Table No. 2, "Permitted Equipment and Applicable Requirements Table" is also known as the "matrix of applicability". The oilfield permits contain many pieces of equipment and Table No. 2 is a great summary of equipment vs. applicable requirements. Another strength is the Periodic Monitoring Summary as it provides a quick and concise summary of all monitoring, source testing, record keeping, and reporting requirements. The Compliance Division also uses the Periodic Monitoring Summary for their review of the annual Compliance Certification as a check-list of all applicable requirements. In addition, the Statement of Basis combined with the Permit Attachments with their own "mini" Statement of Basis provide a lot of information on rule applicability, exemptions, and monitoring requirements.

As for a weakness, the permits are very detailed and the tables require a lot of work to set them up. However, once the initial permit is completed, future permit revisions are fairly straight forward and not that complicated.

7. How have the Department's statements of basis evolved over the years since the beginning of the Title V program? Please explain what prompted changes, and comment on whether you believe the changes have resulted in stronger statements of basis.

Our Statement of Basis has improved with increased EPA guidance for writing a Statement of Basis. In addition, other EPA Title V program evaluations provided additional guidance on drafting a Statement of Basis. Yes, I believe our Statement of Basis has improved over time. It is also important to note that our permit "attachments" each contain an "applicability" section that is essentially a "mini" Statement of Basis.

8. Does the statement of basis explain:

Y☒ N ☐ **a. the rationale for monitoring (whether based on the underlying standard or monitoring added in the permit)?**

Yes, as it applies to 40 CFR Part 64, "Compliance Assurance Monitoring". We try to explain when and when it does not apply. In addition, our permit "attachments" each contain an "applicability" section that is essentially a "mini" Statement of Basis that may also discuss monitoring requirements.

In addition, most permits discuss the applicability and requirements of VCAPCD Rule 103, "Continuous Monitoring Systems".

It is important to note that most of the source specific rules in the VCAPCD Title V Permit Program do have built-in periodic monitoring requirements such as emissions screening, source testing, and continuous emissions monitoring.

Y☒ N ☐ **b. applicability and exemptions, if any?**

Yes, the VCAPCD Statement of Basis explains rule applicability and rule exemptions if applicable. In addition, our permit "attachments" each contain an "applicability" section that is essentially a "mini" Statement of Basis.

Y☒ N ☐ **c. streamlining (if applicable)?**

Yes, streamlining is either discussed in the Statement of Basis in the front of the permit or is described in the permit "attachment" for the rules that have been streamlined.

Y☒ N ☐ **9. Do you provide training and/or guidance to your permit writers on the content of the statement of basis?**

Yes, in the sense that the VCAPCD Statement of Basis follows a standard template. Training is also considered as "one on one" because of the small permitting staff and the fact that the Engineering Division Manager provides detailed quality assurance for each Title V Permit.

10. Do any of the following affect your ability to issue timely initial title V permits: (If yes to any of the items below, please explain.)

Y☐ N ☒ **a. SIP backlog (i.e., EPA approval still awaited for proposed SIP revisions)**

No, each permit attachment details the SIP approval status of the rule(s) that apply to each attachment.

Y☐ N ☒ **b. Pending revisions to underlying NSR permits**

The VCAPCD has a two-step Authority to Construct and Permit to Operate process as detailed in Rules 10.A and 10.B. The Authority to Construct is essentially the NSR permit and its approval process is outside of the Title V Permit modification process and issuance process.

Y☐ N ☒ **c. Compliance/enforcement issues**

As discussed above, non-compliance is generally not that common in our Title V Permit Program.

Y☐ N ☒ **d. EPA rule promulgation awaited (MACT, NSPS, etc.)**

Y☐ N ☒ **e. Permit renewals and permit modification (i.e., competing priorities)**

Many of the VCAPCD Title V Permits have very few permit modifications. For Title V Permits where modifications are common and ongoing, the permit renewal /reissuance process is often combined with open permit modification applications.

Y☐ N ☒ **f. Awaiting EPA guidance**

11. Any additional comments on permit preparation or content?

The VCAPCD does not issue separate Title V Permits (Rule 33) and VCAPCD Permits (Rule 10). As stated on the cover page of a VCAPCD Title V permit:

"The Part 70 permit consists of this page and the tables, attachments and conditions listed in the attached table of contents. The Part 70 permit application is included for reference only and is not a part of the Part 70 permit.

Pursuant to Rule 33.1, the Part 70 permit shall also serve as a permit to operate issued to fulfill the requirements of Rule 10.B."

B. General Permits (GP)

Y☐ N ☒ **1. Do you issue general permits?**

No, however our Rule 33.10, "General Part 70 Permits" allows for General Permits.

a. If no, go to next section

b. If yes, list the source categories and/or emission units covered by general permits.

Y☐ N ☐ **2. In your agency, can a title V source be subject to multiple general permits and/or a general permit and a standard "site-specific" title V permit?**

a. What percentage of your title V sources have more than one general permit? _____%

Y☐ N ☐ **3. Do the general permits receive public notice in accordance with 70.7(h)?**

a. How does the public or regulated community know what general permits have been written? (e.g., are the general permits posted on a website, available upon request, published somewhere?)

4. Is the 5 year permit expiration date based on the date:

Y☐ N ☐ **a. the general permit is issued?**

Y☐ N ☐ **b. you issue the authorization for the source to operate under the general permit?**

5. Any additional comments on general permits?

C. Monitoring

1. **How do you ensure that your operating permits contain adequate monitoring (i.e., the monitoring required in §§ 70.6(a)(3) and 70.6(c)(1)) if monitoring in the underlying standard is not specified or is not sufficient to demonstrate compliance ?**

   The current VCAPCD Engineering Division Manager participated in the early CAPCOA / EPA discussions and agreements regarding the addition of periodic monitoring when the applicable standard does not contain a periodic monitoring requirement or does not contain adequate periodic monitoring. In the firsts few years of the Title V Permit Program, the VCAPCD and EPA Region 9 worked together to make sure that the permits contained adequate periodic monitoring. The VCAPCD continues to require the original periodic monitoring approved by EPA Region 9.

   Practically speaking, the majority of the VCAPCD Title V specific applicable requirements do contain adequate periodic monitoring such as emissions screening, monitoring, source testing, recordkeeping and reporting. These rules apply to a number of Title V permits and include, but are not limited to, Rule 59, "Electrical Power Generating Equipment – Oxides of Nitrogen Emissions", Rule 74.9, "Stationary Internal Combustion Engines, Rule 74.15.1, "Boilers, Steam Generators, and Process Heaters", and Rule 74.23, "Stationary Gas Turbines".

   All Title V permits are subject to VCAPCD Rule 50, "Opacity", and this rule does not include monitoring requirements. As an example, the following are the monitoring requirements for Rule 50 that were developed, and agreed upon, by VCAPCD and EPA Region 9. In general, all Title V permit requirements require an "annual compliance certification" as a default monitoring requirement.

   Permittee shall perform routine surveillance and visual inspections to ensure that compliance with Rule 50 is being maintained. A record shall be kept of any occurrence of visible emissions other than uncombined water greater than zero percent for a period or periods aggregating more than three (3) minutes in any one (1) hour. These records shall include the date, time, and identity of emissions unit. If the visible emissions problem cannot be corrected within 24 hours, permittee shall provide verbal notification to the District within the subsequent 24 hours. These visible emissions records shall be maintained at the facility and submitted to the District upon request.

On an annual basis, permittee shall certify that all emissions units at the facility are complying with Rule 50. This annual compliance certification shall include a formal survey identifying the date, time, emissions unit, and verification that there are no visible emissions other than uncombined water greater than zero percent for a period or periods aggregating more than three (3) minutes in any one (1) hour. As an alternative, the annual compliance certification shall include a formal survey identifying the date, time, emissions unit, and verification that there are no visible emissions for a period or periods aggregating more than three (3) minutes in any one (1) hour which are as dark or darker in shade as that designated as No. 1 on the Ringelmann Chart, or equivalent to 20% opacity and greater, as determined by a person certified in reading smoke using EPA Method 9, or any other appropriate test method as approved in writing by the District, the California Air Resources Board, and the U.S. Environmental Protection Agency.

Y☐ N ☒

a. Have you developed criteria or guidance regarding how monitoring is selected for permits? If yes, please provide the guidance.

No, but as discussed above, the VCAPCD followed the early guidance developed by CAPCOA and approved by EPA Region 9. The VCAPCD continues to use the approved monitoring guidance as applicable. In addition as discussed above, the majority of the rules applicable to Title V sources have built-in periodic monitoring requirements.

Y☒ N ☐

2. Do you provide training to your permit writers on monitoring? (e.g., periodic and/or sufficiency monitoring; CAM; monitoring QA/QC procedures including for CEMS; test methods; establishing parameter ranges)

VCAPCD Title V Permitting staff is given the opportunity to attend CARB Training including Course No. 221 for Continuous Emissions Monitors and Course No. 224 for Observing Source Tests. In addition, the VCAPCD has created a very detailed CAM Plan Instructions publication that provides a general discussion and summary of CAM requirements and applicability. These CAM Plan Instructions are used by both Permit holders and VCAPCD Title V Permit staff.

Y☒ N ☐

3. How often do you "add" monitoring not required by underlying requirements? Have you seen any effects of the monitoring in your permits such as better source compliance?

The VCAPCD very often uses "surrogate" monitoring parameters that are not necessarily required by the underlying requirement. Examples include flue gas recirculation (FGR) settings on a boiler or steam generator, water injection rates on a gas turbine, and combustion temperature on a thermal or catalytic oxidizer. Another example includes a source testing requirement for a NOx BACT limit on a Hot Air Furnace that is not subject to a NOx prohibitory rule that requires source testing. Surrogate monitoring is a form of continuous monitoring that results in better compliance.

4. What is the approximate number of sources that now have CAM monitoring in their permits? Please list some specific sources.

Of the total 23 VCAPCD Title V Permits, there are four (4) Title V Permits with CAM monitoring. The permits include:

Permit No. 00036 = PM from kiln with baghouse
Permit No. 00041 = NOx from rich burn engine with catalyst
Permit No. 01493 = NOx from rich burn engine with catalyst
Permit No. 01494 = NOx from gas turbine with catalyst

Y☐ N ☒ **5. Has the Department ever disapproved a source's proposed CAM plan?**

No, the VCAPCD has worked with Title V Permit holders and EPA region 9 to require a mutually agreeable CAM monitoring plan.

D. Public Participation and Affected State Review

Public Notification Process

1. **Which newspapers does the Department use to publish notices of proposed title V permits?**

   The Ventura County Star, with the provision that the public notice is published in all versions (all city specific versions) of the Ventura County Star.

Y☐ N☒ 2. **Do you use a state publication designed to give general public notice?**

   No, but as discussed below the VCAPCD uses a newspaper publication service and does not deal with the newspaper directly.

Y☒ N☐ 3. **Do you sometimes publish a notice for one permit in more than one paper?**

   a. **If so, how common is if for the Department to publish multiple notices for one permit?**

      Yes we have, but it is not very common. However, for a specific source in the northern portion of Ventura County near the border with Kern County, we published in the Bakersfield Californian (www.bakersfield.com) and The Mountain Enterprise (http://mountainenterprise.com/) in addition to the Ventura County Star. The source is Permit No. 00036 currently known as LWFP, LLC / Trinity ESC in Frazier Park, CA.

   b. **How do you determine which publications to use?**

      In the specific case above, it was suggested by the local residents interested in the project and approved by the VCAPCD for that stationary source.

   c. **What cost-effective approaches have you utilized for public publication?**

      We currently use a newspaper publication service known as the Daily Journal Corporation / California Newspaper Service Bureau. It is internet based, very easy to deal with, and public notice documentation and invoicing is provided in a timely

manner. In addition, we sometimes "combine" notices for multiple Title V Permit Reissuance applications to reduce costs. For example, the three (3) Ventura County Navy Base Title V Permits (Nos. 00997, 01006, 01207) have the same reissuance periods and the public notice has been combined for the permits.

Y☒ N☐ **4. Have you developed mailing lists of people you think might be interested in title V permits you propose? [e.g., public officials, environmentalists, concerned citizens]**

Yes. However, the public interest level in VCAPCD Title V permit actions is very low.

Y☒ N☐ **a. Does the Department maintain more than one mailing list for title V purposes, e.g., a general title V list and source-specific lists?**

Yes, as required by Section B.2.b of Rule 33.7, "Part 70 Permits – Notification", the VCAPCD maintains a "Part 70 permit action notification list". In addition, for specific stationary sources upon request, the VCAPCD will provide notice of specific permit actions.

c. How does a person get on the list? (e.g., by calling, sending a written request, or filling out a form on the Department's website)

There is not a formal process to get on the list. A phone call, email, letter, etc. may be used to get on the list. The VCAPCD does not require the submittal of a form to get on this list.

d. How does the list get updated?

The "Part 70 permit action notification list" is not large, and gets updated only upon request.

e. How long is the list maintained for a particular source?

There is no set procedure. Currently, the list for a particular source is only maintained for a specific permit action through its completion.

f. What do you send to those on the mailing list?

The "Part 70 permit action notification list" only receives a copy of the EPA notification letter of proposed decision on a significant Part 70 Permit action. Upon request, the proposed permit and engineering analysis are also provided to the Part 70 permit action notification list. For a recent permit actions with a permit-specific notice list, the proposed permit was provided to those on the list and the proposed permit and supporting engineering analysis were posted on the VCAPCD web site.

Y☒ N☐ **5. Do you reach out to specific communities (e.g., environmental justice communities) beyond the standard public notification processes?**

Yes, but not on a normal basis and only for specific projects where there is such interest.

Y☒ N☐ **6. Do your public notices clearly state when the public comment period begins and ends?**

Yes, by stating in the public notice that "Written comments must be submitted no later than 30 days from the date of this publication". This format is used because the exact date of public notice is not certain and may vary by a day or two.

7. What is your opinion on the most effective methods for public notice?

My thoughts on this topic have changed over time. I now think that notices in actual newspapers are a thing of the past and no longer effective. I think that a combination of VCAPCD website notice with direct notice to interested parties via email is the current most effective method for public notice.

Y☒ N☐ **8. Do you provide notices in languages besides English? Please list the languages and briefly describe under what circumstances the Department translates public notice documents?**

Historically, public notices for Title V and NSR purposes have only been provided in English. However, for a recent NSR permitting action known as the Puente Power Project, the VCAPCD provided a public notice in English, Spanish, Mixteco, and Tagalog both in local newspapers (Ventura County Star in English and Ventura County VIDA in Spanish) and on the VCAPCD website (in all four languages).

Public Comments

9. How common has it been for the public to request that the Department extend a public comment period?

It is not very common at all. The VCAPCD has received only one Title V Reissuance Permit application where a request was submitted (and granted) to extend the public comment period.

Y☐ N ☒ **a. Has the Department ever denied such a request?**

b. If a request has been denied, the reason(s)?

The VCAPCD has never denied a request to extend the public comment period. However as discussed above, such requests rarely occur.

Y☒ N☐ **10. Has the public ever suggested improvements to the contents of your public notice, improvements to your public participation process, or other ways to notify them of draft permits? If so, please describe.**

As described above, the public suggested a notification in the Bakersfield Californian and The Mountain Enterprise in addition to the Ventura County Star.

11. Approximately what percentage of your proposed permits has the public commented on?

Less than 2 percent. Of over approximately 100 Title V newspaper notices, there were only two (2) proposed permits that the public commented on. Both had Title V permit hearings requested and granted

Y☐ N☒ **12. Over the years, has there been an increase in the number of public comments you receive on proposed title V permits?**

No. In general, comments on the VCAPCD Title V public notices have been negligible.

Y☒ N☐ **13. Have you noticed any trends in the type of comments you have received? Please explain.**

Yes. Of the two proposed permits described above, both had perceived odor issues.

a. What percentage of your permits change due to public comments?

Less than 2 percent. Of over approximately 100 Title V newspaper notices, there were only two (2) proposed permits that the public commented on and the permit changed due to public comment.

Y☒ N☐ **14. Have specific communities (e.g., environmental justice communities) been active in commenting on permits?**

In the cases described above, the specific communities were the neighbors very close to the subject stationary sources. In addition, some known environmental justice communities have not commented on Title V public notices in their communities.

Y☐ N☒ **15. Do your rules require that any change to the draft permit be re-proposed for public comment?**

Not any change, but our rules do require in certain cases that if a proposed permit is revised, the revised proposed permit shall be provided to EPA for review. See Rule 33.7.C.2 and Rule 33.7.C.3. The VCAPCD would likely re-propose a permit for public comment if there were significant changes to the permit such as a change in an emission control device or key emissions limit. Practically speaking, this situation rarely ever occurs. See below.

a. If not, what type of changes would require you to re-propose (and re-notice) a permit for comment?

In the past, the VCAPCD has re-proposed a permit for public comment after the original proposed permit had significant revisions in response to public comment. In a current situation, the VCAPCD will be re-proposing a permit for public comment after the permit applicant proposed a major equipment change at the facility. In this case, the VCAPCD may not do a newspaper notice, but will provide a new proposed permit to EPA and to those people that commented on the original proposed permit.

EPA 45-day Review

Y☒ N☐ **16. Do you have an arrangement with the EPA region for its 45-day review to start at the same time the 30-day public review starts? What could cause the EPA 45-day review period to restart (i.e., if public comments received, etc)?**

Yes, the 30 day public review and 45 day EPA review is conducted at the same time for Significant Part 70 Permit Actions subject to public notice. As discussed above, Rule 33.7.C.2 and Rule 33.7.C.3 require that EPA be provided a revised, proposed permit for additional review. Also as discussed above, if there is significant public comment on a proposed permit, both the public and EPA would be provided with a copy of the revised proposed permit. This would start a new 45-day EPA review period.

a. How does the public know if EPA's review is concurrent?

Information about concurrent public notice and EPA review is not included in the current public notice template. However, the cover letter for EPA review of a permit reissuance or permit modification clearly states that a public notice is being conducted, or is not being conducted, as required by VCAPCD rules. All EPA cover letters for the review of significant permit modifications where public notice is required is copied to the "Part 70 permit action notification list". Therefore, the people on this list know that public review and EPA review is concurrent.

17. If the Department does concurrent public and EPA review, is this process a requirement in your title V regulations, or a result of a MOA or some other arrangement?

VCAPCD conducts concurrent public and EPA review for Significant Permit Actions as required by VCAPCD rules. Rule 33.7.B.2 requires a minimum 30 day public notice for Significant Part 70 Permit Actions and Rule 33.7.C .3 requires EPA review of the proposed permit by no later than the publication date of the required public notice. Therefore, the VCAPCD Title V rules require concurrent EPA and public review.

Permittee Comments

Y☒ N☐ 18. Do you work with the permittees prior to public notice?

The VCAPCD Title V Permit Modification application forms require the applicant provide proposed changes to the permit. As discussed above, most changes are small changes at large sources. Therefore, the permit changes prior to public notice are well known by the permit applicant. The permit applicant receives an official draft proposed permit at the time of the public notice. In addition as discussed above, the VCAPCD has a 2-step Authority to Construct and Permit to

Operate process. When an Authority to Construct has been granted, and the Permit to Operate is submitted to modify the Title V permit, the approved Authority to Construct is essentially "working with the permittees" prior to the public notice for a Significant Permit Modification.

Y☒ N☐ **19. Do permittees provide comments/corrections on the permit during the public comment period? Any trends in the type of comments? How do these types of comments or other permittee requests, such as changes to underlying NSR permits, affect your ability to issue a timely permit?**

Yes, permittees often provide corrections and comments during the public comment period. The trend is that the comments are generally minor in nature and related to the equipment list on Table Nos. 2, 3, and 4 of the permit. As an example, the VCAPCD oilfield Title V permits contain many pieces of equipment and a permit that is open for comment may need a correction to the equipment list. These types of comments do not affect the VCAPCD ability to issue a timely final permit.

The concept of "underlying NSR permit" does not really apply to the VCAPCD Title V Permit program. The VCAPCD Authority to Construct process is the underlying NSR permit and all NSR decisions such as BACT and emission offsets are determined when the Authority to Construct is issued. An Authority to Construct is valid for 2 years and is "converted" to a Permit to Operate when the Title V Permit Modification application is submitted. During this Step No. 2 of the VCAPCD 2-step permit processing scheme, a temporary Permit to operate is issued pursuant to Rule 10.B.4.

It is very rare for a permit applicant to comment on the applicable requirements such as emissions limits, monitoring, source testing, record keeping, and reporting as these are well established in many of the VCAPCD rules and regulations and established as a part of the VCAPCD Authority to Construct process.

Public Hearings

20. What criteria does the Department use to decide whether to grant a request for a public hearing on a proposed title V permit? Are the criteria described in writing (e.g.., in the public notice)?

A public hearing is held upon request. The public notices states "No public hearing on this matter has been scheduled, but a public hearing will be scheduled if timely requested by a member of the public in

writing. If scheduled, a separate public notice for the hearing will be provided." The VCAPCD has never denied a request to conduct a public hearing. However as noted above, requests for Title V public hearings are very rare.

Y☐ N☒ **a. Do you ever plan the public hearing yourself, in anticipation of public interest?**

No. This has not occurred to date.

Availability of Public Information

Y☐ N☒ **21. Do you charge the public for copies of permit-related documents?**

We currently do not charge for copies of the proposed Title V permit or related documents. As discussed below, these costs would be covered by the permit applicant as required by VCAPCD rules. It is now very common to put a proposed Title V permit on the VCAPCD website for download if there is interest. We also use email to provide the information electronically without printing paper.

If yes, what is the cost per page?

Not generally applicable for our Title V permit program. However, in general the VCAPCD approved rate for copies is $0.17 (17 cents) per page for copying requests of more than 10 pages.

Y☐ N☒ **a. Are there exceptions to this cost (e.g., the draft permit requested during the public comment period, or for non-profit organizations)?**

Y☒ N☐ **b. Do your title V permit fees cover this cost? If not, why not?**

Yes, our rules allow us to cover these costs. VCAPCD Rule 42.B.2.d allows the VCAPCD to charge the Title V permit applicant for the costs related to providing material to the public during the public comment periods as follows:

Rule 42.B.2.d. "In addition to the fees calculated above, the processing fee for each application includes the costs for publication, reproduction, and mailing of any required public notice or documents provided by the District as part of the public participation process associated with the application. Publication and reproduction costs are the actual costs of

those services and materials. Mailing costs include actual postage costs."

22. What is your process for the public to obtain permit-related information (such as permit applications, draft permits, deviation reports, 6-month monitoring reports, compliance certifications, statement of basis) especially during the public comment period?

There has historically been no interest in any information other than the proposed draft permit. The VCAPCD has a public records request form that may be submitted if the other information is ever requested. The link to the form is as follows:

http://www.vcapcd.org/pubs/Engineering/Public-Information-Request-Form-20150310.pdf

Y☐ N☒ **a. Are any of the documents available locally (e.g., public libraries, field offices) during the public comment period? Please explain.**

The proposed permit and related documents are only available upon request (hard copy or electronically) or sometimes on the VCAPCD website. Hard copies have never been located for review at off-site locations.

23. How long does it take to respond to requests for information for permits in the public comment period?

The goal is to fulfill the request in a few business days. In general, VCAPCD Rule 203 allows for ten (10) working days to complete public records requests.

Y☐ N☒ **24. Have you ever extended your public comment period as a result of requests for permit-related documents?**

This situation has never occurred.

Y☐ N☒ **b. Do information requests, either during or outside of the public comment period, affect your ability to issue timely permits?**

In the few cases where there has been significant public interest, information requests did not affect our ability to issue timely permits. I would say that responding to the comments on the permit did take time and slowed the timing to issue the

final permit. In these cases, the Title V permit holder had an application shield.

25. What title V permit-related documents does the Department post on its website (e.g., proposed and final permits, statements of basis, public notice, public comments, responses to comments)?

The following is a link to Title V information on the VCAPCD website:

http://www.vcapcd.org/title_v.htm

This page contains basic information on the Title V permit process, a list of VCAPCD Title V Permits, selected proposed and final VCAPCD Title V Permits, and links to Title V permit application forms and instructions and Title V compliance certification forms and instructions. A statement of basis is included as a part of every Title V permit. Title V public notices, comment letters, and responses to comment letters are not routinely included on the VCAPCD website.

a. How often is the website updated? Is there information on how the public can be involved?

The website is updated on an as-needed basis. The website provides contact information for the public to ask questions about the Title V permit program.

Y☒ N☐ **26. Have other ideas for improved public notification, process, and/or access to information been considered? If yes, please describe.**

The VCAPCD is following the new EPA e-notification rule and is considering revising its Title V public notice rules and is considering providing more public notice on the VCAPCD website.

Y☒ N☐ **27. Do you have a process for notifying the public as to when the 60-day citizen petition period starts? If yes, please describe.**

There are no published notification procedures other than the listing of the Title V rules on the VCAPCD website. VCAPCD Rule 33.7.D.7 details the 60-day citizen petition process. Only a single Title V permit application sparked some interest on the 60-day citizen period. Information on the citizen petition process was provided to the interested party upon their request. In this particular case, a citizen petition was NOT submitted to EPA.

Y☒ N☐ **28. Do you have any resources available to the public on public participation (booklets, pamphlets, webpages)?**

The only information is on the VCAPCD Title V webpage as described above. The VCAPCD does not currently have booklets or pamphlets on public participation.

http://www.vcapcd.org/title_v.htm

Y☐ N☒ **29. Do you provide training to citizens on public participation or on title V?**

No. The only "training" conducted is during a public hearing, if requested. The public hearings that have been conducted do explain the Title V permit program in general and the public participation process.

Y☒ N☐ **30. Do you have staff dedicated to public participation, relations, or liaison?**

a. Where are they in the organization?

At this time, only the VCAPCD Title V permit staff would be involved. The VCAPCD does have a public information officer position that is currently vacant.

b. What is their primary function?

At this time, only the VCAPCD Title V permit staff would be involved. Their primary function is working on VCAPCD permit applications, both Title V and non-Title V permit applications.

Affected State Review and Review by Indian Tribes

31. How do you notify tribes of draft permits?

The VCAPCD has never notified a tribe of a draft Title V Permit.

32. Has the Department ever received comments on proposed permits from Tribes?

No.

33. Do you have any suggestions to improve your notification process?

See below.

Any additional comments on public notification?

The VCAPCD is very open to revising its Title V public notice process and acknowledges that the concept of newspaper notices may no longer be the best form of communication with the public. However, over the years it does seem that interested parties have been able to effectively communicate with the VCAPCD on the Title V Permit Program despite the limitations of a newspaper notice.

At this time the VCAPCD is considering including a website notice for every newspaper notice.

E. Permit Issuance / Revision / Renewal

Permit Revisions

1. **Did you follow your regulations on how to process permit modifications based on a list or description of what changes can qualify for:**

Y☒ N☐ **a. Administrative amendment?**

Y☒ N☐ **b. §502(b)(10) changes?**

Yes in the sense that VCAPCD Rule 33.4, "Part 70 Permits – Operational Flexibility" allows for alternative operating scenarios, voluntary emission caps, and contravening express Part 70 permit conditions. However, these types of changes rarely, if ever, occur.

Y☒ N☐ **c. Significant and/or minor permit modification?**

Y☒ N☐ **d. Group processing of minor modifications?**

2. **Approximately how many title V permit revisions have you processed for the last five years?**

About 222 permit revision applications. Of this total, there were 51 Administrative Amendments, there were 146 Minor Modifications, and there were 25 Significant Modifications (all New or Reissuance Title V or Title IV Acid Rain Permits). There were no Off-Permit Revisions or 502(b)(10) Revisions.

a. What percentage of the permit revisions were processed as:

i. Significant *(11%)*

ii. Minor *(66%)*

iii. Administrative *(23%)*

iv. Off-permit *(0%)*

v. 502(b)(10) *(0%)*

3. **For the last five years, how many days, on average, does it take to process (from application receipt to final permit revision):**

    a. **a significant permit revision?** *The only significant permit revisions that we have processed over the last 5 years have been reissuance applications. For nearly all of the cases, the applications were submitted about 6 to 8 months prior to the expiration date and the final permits were issued in about 6 or 8 months in coordination with the expiration dates. So, about 180 days and in all cases application shields are granted for Part 70 reissuance Applications. Note that there has never been a Significant Permit Revision that was NOT a reissuance.*

    b. **a minor revision?**

    Most VCAPCD minor revisions are issued in less than 90 days. Sometimes multiple minor revisions are grouped together and the applications submitted the earliest may be issued in more than 90 days. Note that VCAPCD Rule 10.B.4 allows for the issuance of a temporary Permit to Operate and VCAPCD Rule 33.9.A.1 allows the permittee to implement the revision / permit change upon submitting the revision application to the VCAPCD.

3. **How common has it been for the Department to take longer than 18 months to issue a significant revision, 90 days for minor permit revisions, and 60 days for administrative amendments? Please explain.**

    It is NOT very common for a significant revision to take more than 18 months to issue. There were only two (2) reissuance applications that exceeded 18 months, but both were issued permit application shields. Nearly all Administrative Amendments are completed in 30 days and would only be more than 60 days if it was grouped with other modification applications for the same Title V permit. Most minor permit revisions are completed in 90 days, and as noted above VCAPCD rules allow for a temporary Permit to Operate.

4. **What have you done to streamline the issuance of revisions?**

    Through the design of the revision application forms and through the use of referencing material previously submitted (such as a compliance certification). In addition, the revision application focuses on the changes to the permit that are necessary.

6. **What process do you use to track permit revision applications moving through your system?**

The VCAPCD has a detailed permit processing database that keeps track of items for a permit application such as submittal date, incomplete date, new information submittal date, permittee response date, complete date, invoicing date, and issuance date.

Y☒ N☐ **7. Have you developed guidance to assist permit writers and sources in evaluating whether a proposed revision qualifies as an administrative amendment, off-permit change, significant or minor revision, or requires that the permit be reopened? If so, provide a copy**

Yes, here are two links:

http://www.vcapcd.org/pubs/Engineering/permits2000/TitleV2000/Forms/Title_V_Modification_Application_Form_Instructions.pdf

http://www.vcapcd.org/pubs/Engineering/permits2000/TitleV2000/Forms/Title_V_Modification_Application_Form.pdf

Y☒ N☐ **8. Do you require that source applications for minor and significant permit modifications include the source's proposed changes to the permit?**

Yes, see the links above.

Y☒ N☐ **a. For minor modifications, do you require sources to explain their change and how it affects their applicable requirements?**

Yes, see the links above. In addition, if an Authority to Construct is granted as a part of the minor modification this "explanation" is established in advance as a part of the Authority to Construct process.

Y☒ N☐ **9. Do you require applications for minor permit modifications to contain a certification by a responsible official that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used?**

Yes, see the links above. The Part 70 permit modification application form contains the statement:

"I certify that the proposed Part 70 permit modification(s) meet the criteria for use of minor permit modification procedures. I request that the minor permit modification procedures be used to modify this Part 70 Permit".

10. When public noticing proposed permit revisions, how do you identify which portions of the permit are being revised? (e.g., narrative description of change, highlighting, different fonts).

Each permit revision includes an Engineering Analysis that provides a detailed description of the changes to the Title V permit. For a revised permit, only the sections of the permit that are changing are provided for review. A full permit would be provided upon request. In addition, each Part 70 Permit contains a table (in Section 1 of the permit) known as the "Permit Revisions Table". This table details the permit application number(s), issue date, brief description of the change, and a list of the sections or pages of the permit that were revised as a part of the permit revision application.

For Title V reissuance applications, the full proposed permit is provided and the changes during permit reissuance are described in detail in the end of the Statement of Basis.

` *The VCAPCD does not provide any underline/strikeout pages for a Title V Permit revision. However, for VCAPCD internal use, a complete binder of the Title V permit is maintained that includes the current pages and any "replaced" pages that are no longer applicable.*

11. When public noticing proposed permit revisions, how do you clarify that only the proposed permit revisions are open to comment?

Other than the methods described above, there is no other system in place at this time. Nearly all of the Title V permit applications that have conducted public notice have been for Permit Reissuance. At Permit reissuance, the VCAPCD considers that the entire permit is open for comment. The Statement of Basis for a proposed Reissuance Permit describes the changes to the permit that are happening at Reissuance. However, the public notice does contain the following sentence regarding germane comments:

"Only comments that address whether the requested permit actions are consistent with the air pollution control requirements that apply to the facility and with the requirements of Rule 33 and 40 CFR Part 70 will be considered."

Permit Renewal Or Reopening

Y☒ N☐ **12. Do you have a different application form for a permit renewal compared to that for an initial permit application?**

a. If yes, what are the differences?

The permit reissuance application focuses only on the necessary changes to the Title V permit.

Y☒ N☐ **13. Has issuance of renewal permits been "easier" than the original permits? Please explain.**

Yes, renewal (reissuance) permits have been easier than the original permits. Renewal permits are revised as necessary and are not drafted "from scratch". As a part of the Reissuance Application, the VCAPCD requires the permittee to submit the changes to Table Nos. 2, 3, and 4 or a certification that there are no changes to the equipment lists.

Y☒ N☐ **14. How are you implementing the permit renewal process (ie., guidance, checklist to provide to permit applicants)?**

In the early days of the Title V process, letters were mailed to Title V sources to remind them of the reissuance process. This is no longer necessary and nearly all sources submit their Title V reissuance applications without prompting or enforcement action. All Title V Reissuance applications forms are available on the VCAPCD website.

15. What % of renewal applications have you found to be timely and complete for the last five years?

Nearly 100%. I can think of only 1 or 2 cases where enforcement action was necessary to get the facility to submit the required Title V Permit reissuance application.

16. How many complete applications for renewals do you presently have in-house ready to process?

Four (4). All have permit application shields as referenced in VCAPCD Rule 33.9.A. All will be proposed to EPA and noticed in the newspaper in the near future.

Y☒ N☐ **17. Have you been able to or plan to process these renewals within the part 70 timeframe of 18 months? If not, what can EPA do to help?**

The answer is "yes" assuming that this question refers to the allowance for a Title V permit holder to submit their Reissuance Application no more than 18 months prior to, and no less than 6 months prior to, the expiration of a Title V permit. Most Title V reissuance Applications are submitted between 6 to 9 months prior to the permit expiration date. With rare exceptions, the VCAPCD has reissued the Part 70 permits "on time". In addition as described above, nearly 100% of reissuance applications receive an application shied as referenced in VCAPCD Rule 33.9.A.

Y☐ N☒ **18. Have you ever determined that an issued permit must be revised or revoked to assure compliance with the applicable requirements?**

No. This situation has never occurred with the VCAPCD Title V Permit Program.

F. Compliance

1. Deviation reporting:

a. Which deviations do you require be reported prior to the semi-annual monitoring report? Describe.

District Rule 32, "Breakdown Conditions" requires both Title V and non-Title V facilities to report breakdowns to the District. Breakdowns are, under certain conditions, unforeseeable failures or malfunction of air pollution control equipment causing a violation of an emission limitation or restriction pursuant to our rules, or failure of continuous in-stack monitoring equipment.

The District has determined that virtually every breakdown meets the criteria to be considered a deviation as defined in 40CFR 71.6(a)(3)(iii)(C).

District Rule 32 requires all breakdowns (therefore, all deviations) to be reported within 4 hours of occurrence and followed up with a written report due within one week of the correction of the breakdown condition. Because of this, the District effectively requires deviations to be reported as they occur with a written follow up report that is due soon afterwards.

Y☐ N☒

b. Do you require that some deviations be reported by telephone?

Not specifically. District Rule 32 requires all breakdowns (therefore, all deviations) to be reported within 4 hours of occurrence but does not specify the means of reporting, only the information that shall be reported. Usually, breakdowns are first reported via the District's dedicated 24-hour phone message line. Permittees may also report via a dedicated email address, although most choose to use the phone line.

c. If yes, do you require a followup written report? If yes, within what timeframe?

District Rule 32 requires all breakdowns (deviations) reported be followed up with a written report due within one week of the correction of the breakdown condition. All deviations must also be followed up with a written report and a must be certified by a responsible official.

Y☒ N☐

d. Do you require that all deviation reports be certified by a responsible official? (If no, describe which deviation reports are not certified).

All deviations must also be followed up with a written report and a must be certified by a responsible official.

Y☒ N☐

i. Do you require all certifications at the time of submittal?

All deviations are required to be followed up with a written report and a must be certified by a responsible official. On rare occasions, the responsible official is not available to sign the certification. In those cases, we require the facility to submit the written report within the due date and without the responsible official certification. They are required to submit the responsible official certification as soon as the responsible official is available to sign the certification. District staff follows up on each of these to verify that the responsible official certification is submitted as required.

Y☒ N☐

ii. If not, do you allow the responsible official to "back certify" deviation reports? If you allow the responsible official to "back certify" deviation reports, what timeframe do you allow for the followup certifications

(e.g., within 30 days; at the time of the semi-annual deviation reporting)?

See i above. On the rare occasions, the responsible official is not available to sign the certification, we require the facility to submit the written report within the due date and follow up with the responsible official certification as soon as the responsible official is available to sign the certification. District staff follows up on every one of these to verify that the responsible official certification is submitted.

2. How does your program define deviation?

We define a deviation as found in 40CFR 71.6(a)(3)(iii)(C), "any situation in which an emissions unit fails to meet a permit term or condition."

Y☐ N☒ **a. Do you require only violations of permit terms to be reported as deviations?**

The District requires <u>all deviations</u>, as defined in 40CFR 71.6(a)(3)(iii)(C), be reported. All deviations includes: any situation in which an emissions unit fails to meet a permit term or condition; a situation where emissions exceed an emission limitation or standard; a situation where process or emissions control device parameter values indicate that an emission limitation or standard has not been met; a situation in which observations or data collected demonstrates noncompliance with an emission limitation or standard or operating condition required by the permit or any situation in which an exceedance or an excursion occurs.

b. Which of the following do you require to be reported as a deviation (Check all that apply):

Y☒ N☐ **i. excess emissions excused due to emergencies (pursuant to 70.6(g))**

Y☐ N☒ **ii. excess emissions excused due to SIP provisions (cite the specific state rule)**

Y☐ N☒ **iii. excess emissions allowed under NSPS or MACT SSM provisions?**

If the excess emissions were allowed by a District rule, state regulation or federal regulation, the event would not be considered to be a deviation.

Y☐ N☒ **iv. excursions from specified parameter ranges where such excursions are not a monitoring violation (as defined in CAM)**

If the excursions from specified parameters did not result in excess emissions for the event, we would not require a deviation report.

Y☒ N☐ **v. excursions from specified parameter ranges where such excursions are credible evidence of an emission violation**

Y☒ N☐ **vi. failure to collect data/conduct monitoring where such failure is "excused":**

The District would not expect a deviation report for failure to collect data where applicable regulation or permit condition does not require data to be collected 100% of the time. We would only expect a deviation report for a situation where the time period that data was not being collected exceeded the non-collection period allowed by the permit, or any applicable rule or regulation.

Y☐ N☒ **A. during scheduled routine maintenance or calibration checks**

Y☒ N☐ **B. where less than 100% data collection is allowed by the permit**

The District would not expect a deviation report when the permit does not require data to be collected 100% of the time. We would only expect a deviation report for a situation where the time period that data was not being collected exceeded the non-collection period allowed by the permit, or any applicable rule or regulation.

Y☒ N☐ **C. due to an emergency**

Y☐ N☒ **vii. Other? Describe.**

3. Do your deviation reports include:

Y☒ N☐ **a. the probable cause of the deviation?**

Y☒ N☐ **b. any corrective actions taken?**

Y☒ N☐ **c. the magnitude and duration of the deviation?**

Y☒ N☐ **4. Do you define "prompt" reporting of deviations as more frequent than semi-annual?**

The District considers "prompt" reports to be any reports that are submitted within any applicable time period required for the facility by any applicable District rule, state regulation or federal regulation.

Y☒ N☐ **5. Do you require a written report for deviations?**

The District requires all deviations reported be followed up with a written report and they must be certified by a responsible official.

Y☒ N☐ **6. Do you require that a responsible official certify all deviation reports?**

The District requires all deviations reported be followed up with a written report and they must be certified by a responsible official.

7. What is your procedure for reviewing and following up on:

a. deviation reports?

The District receives notification of a possible deviation (usually as a report of a breakdown, pursuant to Rule 32) via telephone or written notification via email or letter. The notification is entered into the VCAPCD permit and compliance database known as PEETS. Once the notification is entered into PEETS, it is assigned to the Compliance Engineer, who is responsible for all follow up related to the notification.

The District may receive notification of an event as a breakdown or as a deviation. Usually, the notification is for a breakdown. As previously mentioned, virtually every breakdown meets the criteria to be considered as a deviation as defined in 40CFR 71.6(a)(3)(iii)(C).

The Compliance Engineer investigates the event to see whether the event meets the criteria as a deviation or breakdown. This is decided on a case-by-case basis. The Compliance Engineer

will also follow up to verify that the facility submitted the appropriate written report within the required time period.

The Compliance Engineer will also follow up with the Compliance Manager to determine whether any unexcused violations have occurred because of the event. The District may elect from a number of options ranging from taking no further action to issuing an NOV and assessing a monetary penalty for the violation. If an unexcused violation occurred, it will be decided whether or not a Notice of Violation (NOV) should be issued.

Once a final disposition has been made, the event is "closed" in PEETS and the associated paperwork is filed.

b. semi-annual monitoring reports?

The District receives semi-annual monitoring reports and they are entered into the VCAPCD permit and compliance database known as PEETS. Once the notification is entered into PEETS, it is assigned to the Compliance Engineer, who is responsible for all review and follow up related to the semi-annual monitoring report.

The Compliance Engineer will review the report, checking for completeness and accuracy. If the facility discloses any violations, deviations, excursions or exceedances, the Compliance Engineer will follow up with the Compliance Manager to determine whether any unexcused violations have occurred. The District may elect from a number of options ranging from taking no further action to issuing an NOV and assessing a monetary penalty for the violation. If an unexcused violation occurred, it will be decided whether an NOV should be issued.

Once the review of the semiannual report is complete and any outstanding compliance issues have been resolved, the semiannual report event is "closed" in PEETS and the report, along with any associated paperwork is filed.

c. annual compliance certifications?

The Compliance Manager who is responsible for tracking the receipt and status of the ACCs receives all Annual Compliance Certifications (ACCs). The Compliance Manager records the receipt of the ACC, and assigns the review to the Compliance

Engineer and then the Compliance Inspector responsible for that facility. Then the Compliance Manager gives the ACC to the Compliance Technician, who is responsible for making a PDF of the ACC and adding it to the District's website at http://www.vcapcd.org/AnnualComplianceCertifications.htm.

Once the District receives an ACC, it is entered into the VCAPCD permit and compliance database known as PEETS for tracking and historical purposes.

The ACC then goes to the Compliance Engineer. The Compliance Engineer will review the ACC for specific content including information specific to source testing, emissions monitoring and CAM for the facilities subject to CAM requirements. The ACC then goes to the Compliance Inspector responsible for that facility.

The Compliance Inspector will review the ACC, checking for completeness and accuracy. The Inspector will also verify that the facility reported on all applicable required items. In addition, the Inspector will verify that all deviations (breakdowns) have been reported and accounted for.

If the facility discloses any violations, deviations, excursions or exceedances, the Compliance Inspector will follow up with the Supervising Inspector and/or the Compliance Manager to determine whether any unexcused violations have occurred. If an unexcused violation occurred, it will be decided whether an NOV should be issued. The District may elect from a number of options ranging from taking no further action to issuing an NOV and assessing a monetary penalty for the violation.

If the ACC is not complete or it is lacking information, the Inspector may elect to either informally (via email or by telephone) or formally (Via letter and by issuing a Notice to Comply) request the additional required information.

Once the review of the ACC is complete and any outstanding compliance issues have been resolved, the Compliance Inspector will review the ACC with the Supervising Compliance Inspector. If it is complete, an invoice will be prepared based on the District hours spent reviewing the ACC.

The ACC and invoice then go to the Compliance Manager, who makes a final review, records the completion of the review and the invoice information. The billing /complete letter is signed

and the letter and invoice are sent out to the facility. The Compliance Manager is responsible for tracking payment of the invoice. The Annual Compliance Certification entry is "closed" in PEETS and the ACC, along with any associated paperwork is filed.

8. What percentage of the following reports do you review?

a. deviation reports

The District reviews 100% of the deviation reports we receive.

b. semi-annual monitoring reports

The District reviews 100% of the semi-annual monitoring reports we receive.

c. annual compliance certification

The District reviews 100% of the Title V annual certifications we receive.

9. Compliance certifications

Y☒ N☐ **a. Have you developed a compliance certification form? If no, go to question 10.**

The District has been using Title V compliance certification forms since we began implementing the Title V permit program. There are a number of different forms posted on the District's website at http://www.vcapcd.org/pubs.htm#TitleV

Title V annual certification related forms posted on the District website include: Title V Certification Attachment Form, Title V Certification Deviation Form, Title V Certification Signature Form Title V Source Test Form. Title V Certification instructions are also posted.

Y☒ N☐ **i. Is the certification form consistent with your rules?**

ii. Is compliance based on whether compliance is continuous or intermittent or whether the compliance monitoring method is continuous or intermittent?

Compliance status, as reported in Title V Annual Compliance Certifications, is based on whether the facility

was in compliance continuously or intermittently during the reporting period.

Y☐ N☒ **iii. Do you require sources to use the form? If not, what percentage does?**

Use of the forms is not mandatory; however, the District encourages use of the District-provided forms. Facilities submitting Annual Compliance Certifications are required to submit all of the required information whether or not they use the District forms.

All but one of the 23 Title V facilities either use the District provided form or a very similar form based on our form. The one Title V facility that does not use our form or a form based on our form is required to submit all information that is contained on the District forms, but in their own format.

Y☒ N☐ **iv. Does the form account for the use of credible evidence?**

One of the key items Compliance staff look for when reviewing any Title V Annual Compliance Certification is that the certification indicates how the facility documents that they were in compliance during the reporting period. Often facilities are required to submit records substantiating compliance along with the annual certification.

Y☒ N☐ **v. Does the form require the source to specify the monitoring method used to determine compliance where there are options for monitoring, including which method was used where more than one method exists?**

One of the key items Compliance staff look for when reviewing any Title V Annual Compliance Certification is that the certification indicate how the facility documents that they were in compliance during the reporting period. The method of monitoring used in determining compliance must be clearly stated on the form. Often records substantiating compliance are required along with the annual certification.

10. Excess emissions provisions:

Y☒ N☐ **a. Does your program include an emergency defense provision as provided in 70.6(g)? If yes, does it:**

District Rule 32, "Breakdown Conditions" requires both Title V and non-Title V facilities to report breakdowns to the District. Breakdowns are, under certain conditions, unforeseeable failures or malfunction of air pollution control equipment causing a violation of an emission limitation or restriction pursuant to our rules, or failure of continuous in-stack monitoring equipment.

The District has determined that the majority of events reported as breakdowns also meet the criteria to be considered as an emergency, as defined in 40CFR 70.6.

For excess emissions events that meet the criteria for breakdowns (emergencies), when the District has deemed them as breakdowns, the facility may be afforded relief from enforcement action for up to 24 hours for equipment and up to 96 hours for continuous monitoring equipment.

Sources with breakdowns or emergencies that persist for more than the 24 or 96 hours afforded by Rule 32 may petition the APCD Hearing Board for an Emergency Variance. If certain conditions are met and "good cause" is shown, the Hearing Board may grant an Emergency Variance for up to a 30-day period.

Y☒ N☐ **i. Provide relief from penalties?**

For excess emissions events that meet the criteria for breakdowns (emergencies), when the District has deemed them as breakdowns, the facility may be afforded relief from enforcement action, including civil penalties for up to 24 hours for equipment and up to 96 hours for continuous monitoring equipment.

Sources with breakdowns or emergencies that persist for more than the 24 or 96 hours afforded by Rule 32 may petition the APCD Hearing Board for an emergency variance. If certain conditions are met and "good cause" is shown, the Hearing Board may grant an Emergency Variance for up to a 30-day period. Sources operating under a variance order are provided relief from District enforcement action, including the imposition of civil penalties for the effective period of the variance.

Y☒ N☐ **ii. Provide injunctive relief?**

Sources with breakdowns or emergencies that persist for more than the 24 or 96 hours afforded by Rule 32 may petition the APCD Hearing Board for an emergency variance. If certain conditions are met and "good cause" is shown, the Hearing Board may grant an Emergency Variance for up to a 30-day period. Sources operating under a variance order are provided relief from District enforcement action, including the imposition of civil penalties for the period of the variance.

Y☒ N☐ **iii. Excuse noncompliance?**

Sources with breakdowns or emergencies that persist for more than the 24 or 96 hours afforded by Rule 32 may petition the APCD Hearing Board for an emergency variance. If certain conditions are met and "good cause" is shown, the Hearing Board may grant an Emergency Variance for up to a 30-day period. Sources operating under a variance order are provided relief from District enforcement action, including the imposition of civil penalties for the period of the variance.

Y☐ N☒ **b. Does your program include a SIP excess emissions provision? If no, go to 10.c. If yes does it:**

Y☐ N☐ **i. Provide relief from penalties?**

Y☐ N☐ **ii. Provide injunctive relief?**

Y☐ N☐ **iii. Excuse noncompliance?**

c. Do you require the source to obtain a written concurrence from the Department before the source can qualify for:

Y☐ N☒ **i. the emergency defense provision?**

District Rule 32, "Breakdown Conditions" requires both Title V and non-Title V facilities to report breakdowns to the District. The District has determined that the majority of events reported as breakdowns also meet the criteria to be considered as an emergency, as defined in 40CFR 70.6.

For excess emissions events that meet the criteria for breakdowns (emergencies), when the District has deemed them as breakdowns, the facility may be afforded relief

from enforcement action for up to 24 hours for equipment and up to 96 hours for continuous monitoring equipment.

The District does not necessarily require the source to obtain prior authorization or written concurrence because the nature of breakdowns or emergency events is that they are very difficult to predict and usually occur without prior warning.

Y☐ N☒ **ii. the SIP excess emissions provision?**

N/A

Y☐ N☒ **iii. NSPS/NESHAP SSM excess emissions provisions?**

If the excess emissions were allowed by a District rule, state regulation or federal regulation, the event would not be considered a deviation. In that case, The District would not require the source to obtain prior written authorization or written concurrence.

11. Is your compliance certification rule based on:

Y☐ N☒ **a. the '97 revisions to part 70 - i.e., is the compliance certification rule based on whether the compliance monitoring method is continuous or intermittent; or:**

Y☒ N☐ **b. the '92 part 70 rule - i.e., is the compliance certification rule based on whether compliance was continuous or intermittent?**

APCD Rule 33.9.B requires that, for each applicable requirement, Title V annual compliance certifications identify whether the facility was in compliance continuously or intermittently since the last certification.

12. Any additional comments on compliance?

The District's CMS Plan contains the District commitment to inspect every Title V facility once every two years. Although the District committed to inspecting once every two years, the District in fact inspects every Title V facility once <u>every</u> year.

G. Resources & Internal Management Support

Y☐ N☒ **1. Are there any competing resource priorities for your "title V" staff in issuing title V permits?**

Permit staff work on permits other than Title V permits, but are able to accomplish both duties. VCAPCD has approximately 1400 stationary sources with a VCAPCD Rule 10 permit, of which 23 are Title V Rule 33 permits also.

a. If so, what are they?

Not applicable.

2. Are there any initiatives instituted by your management that recognize/reward your permit staff for getting past barriers in implementing the title V program that you would care to share?

Not at this time. The VCAPCD Title V permit program has never had a significant "barrier" in implementing its Title V program.

3. How is management kept up to date on permit issuance?

As described above, the VCAPCD utilizes a very detailed permit application tracking program. As a small staff, the VCAPCD Engineering Division Manager provides detailed review of each Part 70 Permit application. The APCO and Compliance Division Manager is informed as necessary on any Title V permitting issues during a weekly VCAPCD management staff meeting.

Y☒ N☐ **4. Do you meet on a regular basis to address issues and problems related to permit writing?**

Yes, as a small staff, the Engineering Division Manager and Title V staff communicate routinely on Title V issues. Non-routine permitting issues are always discussed. In addition as described above, the VCAPCD has a weekly management staff meeting and the APCO, Engineering Division Manager, and Compliance Division Manager specifically discuss permitting / compliance issues of concern.

Y☒ N☐ **5. Do you charge title V fees based on emission rates?**

Yes, emission fees are invoiced, but emission fees are only one of the components of the VCAPCD Title V fees as detailed in VCAPCD Rule 42, "Permit Fees". See Rule 42.H, "Renewal Fees".

a. If not, what is the basis for your fees?

Not applicable as VCAPCD does have fees for Title V sources based on emission rates.

b. What is your title V fee?

All permitting fees are described in Rule 42, "Permit Fees". All Authority to Construct permit applications include both filing fees and processing fees. All stationary sources, including Title V sources, pay an annual renewal fee based on the tons per year, and pounds per hour, of criteria pollutant emissions. For a Permit to Operate application after an Authority to Construct, Rule 42.A.1 requires a filing fee and for Title V sources, Rule 42.B.2.b requires an additional permit processing fee. All Title V sources also pay fees pursuant to Rule 47, "Source Test, Emission Monitor, and Call-Back Fees".

In addition, although not related to permit applications, Rule 42.O requires a Part 70 Compliance Certification Fee when the Compliance Division reviews the annual compliance certification.

6. How do you track title V expenses?

The only tracking of Title V expenses is through the tracking of the amount of time spent on Title V permit applications, including both Authority to Construct and Permit to Operate applications (Rules 42.A and 42.B) and the amount of time spent on the review of Annual Compliance Certifications (Rule 42.O) or time associated with Rule 47.

7. How do you track title V fee revenue?

The VCAPCD has an invoice program that tracks all filing fees, permit processing fees, and annual renewal fees (annual emission fees) paid by a Title V source. This same invoice program is used by all permitted sources as well as Title V sources. For a given Title V source, a report can be generated to show all fees paid on a historical basis. For example, for Title V Permit No. 00041 (Aera Energy) the report contains 42 pages of invoices going back to June 1, 1998. The VCAPCD has a separate tracking system for fees paid through Rule 42.O and Rule 47.

8. How many title V permit writers does the agency have on staff (number of FTE's, both budgeted and actual)?

Approximately 1.0 FTE's are currently on the Title V permit writing staff. The staff includes Engineering Division Manager Kerby E. Zozula (0.2 FTE), Air Quality Engineer John Harader (0.6 FTE) and Permit Processing Specialist Laura Kranzler (0.2 FTE).

Y☐ N☒ 9. Do the permit writers work full time on title V?

No. Each of the permit writers named above do <u>not</u> work full time on Title V, however they all work 100% of their time on permitting Title V sources and non-Title V sources.

a. If not, describe their main activities and percentage of time on title V permits.

Kerby Zozula (20% Title V) is the Engineering Division Manager and oversees the permitting program that includes all Authority to Construct and Permit to Operate applications for all Title V sources and all non-Title V sources. Kerby also oversees the annual permit renewal program and air toxics hot spot program that is managed and supervised by Terri Thomas, Supervising Air Quality Engineer.

John Harader (60% Title V) spends 100% of his time working on Authority to Construct and Permit to Operate applications for both Title V sources and non-Title V sources. John does all of the Title V modification applications and nearly all of the Title V reissuance applications.

Laura Kranzler (20% Title V) spends most of her time screening all new permit applications and entering them into the VCAPCD permit application tracking system, including the time tracking system and invoice system. For Title V Permits, Laura processes the majority of the Administrative Amendments and an occasional Part 70 Reissuance Application. For non-Title V permits, Laura also processes all administrative change applications such as transfer of ownership applications. Laura also coordinates the VCAPCD Rule 250 Agricultural Diesel Engine Registration Program.

b. How do you track the time allocated to Title V activities versus other non-title V activities?

As discussed above, the VCAPD time tracking system tracks <u>all</u> time spent on Authority to Construct and Permit to Operate applications, including Title V Administrative Amendments, Permit Modifications, and new Title V permit applications and Title V reissuance applications. The database could be queried to detail time spent for a Title V permitted facility, for each Title V Authority to Construct application, Permit to Operate application, Administrative Amendment, Reissuance Application, etc.

Y☒ N☐ 10. Are you currently fully staffed?

Yes.

11. What is the ratio of permits to Title V permit writers?

As discussed above, the VCAPCD has approximately 1,400 stationary source permits, of which 23 are Title V Permits. As also discussed above, there is 1.0 FTE permit writer, but at any given time, two (2) permit writers are available to work on a Title V permit application. Therefore, the ratio of Title V permits to Title V permit writers is 23 to 1, or 11.5 to 1, depending on how you look at it.

12. Describe staff turnover.

Staff turnover has been pretty much non-existent since "Day 1" of the Ventura County APCD Title V Permit Program. Kerby Zozula and John Harader have been working on the program since "Day 1". Laura Kranzler worked on the Title V permit program since Day 1", left the VCAPCD for about 10 years, and has been back with the VCAPCD for about 5 years.

a. How does this impact permit issuance?

To date since the inception of the Title V permit program there has not been a staff turnover problem that has lead to delayed permit issuance. In fact, the lack of staff turnover has probably contributed to improved permit issuance.

b. How does the permitting authority minimize turnover?

In general, the location, climate, and lifestyle of Ventura County probably lend itself to a lack of staff turnover in the entire VCAPCD. Salaries are generally higher at the VCAPCD than a number of other air districts in the State of California or other states.

The VCAPCD also authorizes a flexible work schedule. For example, Kerby Zozula and Laura Kranzler each work four 10 hour days, Monday through Friday, with 3-day weekends. For the author of this survey, this is a very significant benefit of working at the VCAPCD.

Y☒ N☐ 13. Do you have a career ladder for permit writers?

a. If so, please describe.

Yes, but in general there is not a very large career ladder at the VCAPCD for permit writers. There are the positions of Engineering Division Manager and Engineering Division Supervisor above the position of permit writer. However, due to the lack of turnover at the VCAPCD, these positions have not been open in many years.

If desired, a permit writer is able to transfer to another Division of the VCAPCD such as rule writer, compliance engineer, etc.

Y☒ N☐ 14. Do you have the flexibility to offer competitive salaries?

Yes and no. Yes, in the sense that VCAPCD salaries are generally higher than most air districts in California. No, in the sense that the permit writers are union employees and their salaries are negotiated between their Union and the County of Ventura.

Y☒ N☐ 15. Can you hire experienced people with commensurate salaries?

In the past 5 to 7 years, there have been very few open positions for air quality engineers at the VCAPCD. There has only been one open position for a permit writer in the last 10 years. For these air quality engineering recruitments, the VCAPCD was able to hire experienced people at the salary offered, but the air quality engineer experience "pool" was not considered to be "deep".

16. Describe the type of training given to your new and existing permit writers.

In general, with a small staff the VCAPCD Engineering Division Manager is able to provide a lot of one-on-one training, especially oil & gas training. Nine (9) of the 23 VCAPCD Title V permits are for the oil & gas industry and the VCAPCD Engineering Division Manager has a Master's Degree in Petroleum Engineering and worked in the oil & gas industry for about 10 years.

In addition, VCAPCD permit writers are encouraged to attend California ARB Training Courses. VCAPCD staff has attended ARB training at the VCAPCD office, and at the Santa Barbara County APCD office and South Coast AQMD office.

17. Does your training cover:

Y☒ N☐ **a. how to develop periodic and/or sufficiency monitoring in permits?**

Y☒ N☐ **b. how to ensure that permit terms and conditions are enforceable as a practical matter?**

Y☒ N☐ **c. how to write a Statement of Basis?**

The VCAPCD Engineering Division Manger provides this training described above in the sense of one-on-one training and the VCAPCD template for Title V permits. It is also important to note that most VCAPCD rules contain terms and conditions, and monitoring, recordkeeping, and reporting requirements that allow VCAPCD Title V permits to be enforceable as a practical matter.

The VCAPCD does not provide any written or formal training materials on these topics. However, the VCAPCD does follow many of the EPA guidelines and policies for these topics.

Y☒ N☐ **18. Is there anything that EPA can do to assist/improve your training? Please describe.**

Yes and no. At this time the VCAPCD Title V permit program is well developed and generally operating without problems and training on Title V or Title V permit writing is not required. My only suggestion for additional EPA training would be in the areas of NSPS and NESHAP/MACT training. For example, EPA came to Southern California for training on the RICE MACT for engines. I would suggest that EPA training like this also be conducted for the newer EPA oil and gas regulations.

19. How has the Department organized itself to address title V permit issuance?

The organization of the VCAPCD Engineering Division was not changed to address Title V permit issuance. The Title V Permit Program was absorbed into the Engineering Division as a daily

function. In the early days of the Title V permit program, VCAPCD staff went to EPA Title V training in North Carolina. In addition, VCAPCD staff met on numerous occasions to develop, finalize, and continuously improve, the Title V permit content and the Title V permit program.

20. Overall, what is the biggest internal roadblock to permit issuance from the perspective of Resources and Internal Management Support?

The largest internal roadblock is the time it takes to process a Title V permit application modification as compared to a non-Title V permit application. The additional time is required to do public notice, EPA letters, and most of all the actual time to modify the Title V permit due to its size and level of detail. VCAPCD Rule 42 does allow for total recovery of these costs through an hourly rate for permit processing time.

At this time the VCAPCD is adequately staffed to issue all Title V permit applications in a timely fashion.

Environmental Justice Resources

Y☒ N☐ **21. Do you have Environmental Justice (EJ) legislation, policy or general guidance which helps to direct permitting efforts?**

Yes, the VCAPCD follows its EPA Section 105 Grant for implementing Environmental Justice in its permitting program. There is no other legislation, guidance or policy for Environmental Justice at this time.

If so, may EPA obtain copies of appropriate documentation?

Yes, the VCAPCD's permitting program does contain an environmental justice component as required by the EPA Section 105 Grant process. The EPA-approved work plan for the Section 105 Grant requires the following Environmental Justice Objective for the VCAPCD Title V and New Source Review Permitting Program:

Enhance the opportunities for public involvement in the permitting process when new or modified sources that significantly increase air pollutant emissions are located in areas likely to have environmental justice issues. Enhanced opportunities will occur through preparing and distributing fact sheets in English and Spanish, if appropriate, to individuals or organizations in the vicinity of the new or modified source, and providing the opportunity for public meetings. For purposes of this milestone, a significant increase in air pollutant

emissions is defined as an increase triggering the public notice requirements in the District rules for criteria pollutants, or 10 tons per year of a single EPA HAP (listed pursuant to §112(b) of the federal Clean Air Act), or 25 tons per year of a combination of EPA HAPs.

Y☒ N☐ **22. Do you have an in-house EJ office or coordinator, charged with oversight of EJ related activities?**

Yes, as detailed in the EPA Section 105 Grant, the Engineering Division Manager would coordinate EJ related activities as a part of the VCAPCD Permits Program. In addition, the VCAPCD does have a public information officer position that is currently vacant.

Y☐ N☒ **23. Have you provided EJ training / guidance to your permit writers?**

Y☒ N☐ **24. Do the permit writers have access to demographic information necessary for EJ assessments? (e.g., socio-economic status, minority populations, etc.**

The VCAPCD has access to the California EPA Office of Environmental Health Hazard Assessment (OEHHA) tool known as the California Communities Environmental Health Screening Tool: CalEnviroScreen. This tool is a screening methodology that can be used to help identify California communities that are disproportionately burdened by multiple sources of pollution.

Y☐ N☒ **25. When reviewing an initial or renewal application, is any screening for potential EJ issues performed? If so, please describe the process and/or attach guidance.**

Other than the environmental justice objective in the VCAPCD Section 105 EPA Grant discussed above, the VCAPCD has no formal EJ screening process for initial or renewal Title V permit applications.

H. Title V Benefits

1. Compared to the period before you began implementing the title V program, does the title V staff generally have a better understanding of:

Y☒ N☐ **a. NSPS requirements?**

Y☒ N☐ **b. The stationary source requirements in the SIP?**

Yes as it relates to the SIP approval status of the VCAPCD rules and regulations.

Y☐ N☒ **c. The minor NSR program?**

No, because the VCAPCD minor NSR program was, and is, totally independent of the Title V permit program.

Y☒ N☐ **d. The major NSR/PSD program?**

Yes, and also due to the fact that the VCAPCD has been working with EPA to get delegation for the PSD program.

Y☒ N☐ **e. How to design monitoring terms to assure compliance?**

Yes, especially due to learning the requirements of the CAM program and permit streamlining for multiple requirements.

Y☒ N☐ **f. How to write enforceable permit terms?**

2. Compared to the period before you began implementing the title V program, do you have better/more complete information about:

Y☐ N☒ **a. Your source universe including additional sources previously unknown to you?**

All VCAPCD Title V permits held VCAPCD Rule 10 permits prior to the start of the Title V permit program. Title V did not impose any new permit requirements at the VCAPCD.

Y☒ N☐ **b. Your source operations (e.g., better technical understanding of source operations; more complete information about emission units and/or control devices; etc.)?**

Yes, the initial VCAPCD Title V permit application required exiting permitted sources to submit new and updated process flow diagrams, process descriptions, plot plans, control device descriptions, etc.

Y☐ N☒ **c. Your stationary source emissions inventory?**

No. the VCAPCD had a well-established emission inventory program prior to the start of the Title V permit program.

Y☒ N☐ **d. Applicability and more enforceable (clearer) permits?**

Yes, with more detailed applicability descriptions in the permit condition attachments and through the use of the Statement of Basis.

3. In issuing the title V permits:

Y☐ N☒ **a. Have you noted inconsistencies in how sources had previously been regulated (e.g., different emission limits or frequency of testing for similar units)? If yes, describe.**

No. Because as discussed above, many of the VCAPCD rules applicable to Title V sources have prescribed periodic monitoring and source testing requirements so there were no differences or inconsistencies. In addition, all Title V permits previously held Rule 10 permits, so any inconsistencies were likely already discovered prior to the start of the Title V permit program.

Y☒ N☐ **b. Have you taken (or are you taking) steps to assure better regulatory consistency within source categories and/or between sources? If yes, describe.**

Yes. Through the use of permit templates and permit attachments, Title V permit conditions and permit terms are now very consistent. In addition, with only 23 Title V Permits, we are able to maintain a good level of consistency and are always working on permit consistency.

4. Based on your experience, estimate the frequency with which potential compliance problems were identified through the permit issuance process:

	Never	Occasionally	Frequently	Often
a. prior to submitting an application	❑X	❑	❑	❑
b. prior to issuing a draft permit	❑X	❑	❑	❑
c. after issuing a final permit	❑X	❑	❑	❑

The answers to a,b,c above is "hardly ever" but not never. All Title V permits previously held Rule 10 permits and were inspected on an annual, or more frequent, schedule by the VCAPCD Compliance Division. Therefore, there were "very few, if any" compliance problems identified through the Title V permit issuance process.

5. Based on your experience with sources addressing compliance problems identified through the title V permitting process, estimate the general rate of compliance with the following requirements prior to implementing title V:

	Never	Occasionally	Frequently	Often
a. NSPS requirements (including failure to identify an NSPS as applicable)	❑x	❑	❑	❑
b. SIP requirements	❑x	❑	❑	❑
c. Minor NSR requirements (including the requirement to obtain a permit)	❑x	❑	❑	❑
d. Major NSR/PSD requirements (including the requirement to obtain a permit)	❑x	❑	❑	❑

As above, there were "very few, if any" compliance problems identified through the Title V permitting process. There was <u>NEVER</u> a failure to identify Minor NSR or Major NSR requirements such as BACT or emission offsets requirements. Any compliance problem identified during Title V permit issuance would fall under the heading of NSPS applicability or SIP requirement.

6. What changes in compliance behavior on the part of sources have you seen in response to title V? (Check all that apply.)

Y☒ N☐ **a. increased use of self-audits?**

Y☒ N☐ **b. increased use of environmental management systems?**

Y☒ N☐ **c. increased staff devoted to environmental management?**

Y☒ N☐ **d. increased resources devoted to environmental control systems (e.g., maintenance of control equipment; installation of improved control devices; etc.)?**

Y☒ N☐ **e. increased resources devoted to compliance monitoring?**

Y☒ N☐ **f. better awareness of compliance obligations?**

Y☐ N☒ **g. other? Describe.**

I would say yes to all of the above (except for g).

Y☒ N☐ **7. Have you noted a reduction in emissions due to the title V program?**

Yes, but only in the early days of Title V where sources took PTE limits pursuant to Rule 35 (as discussed below) to stay below Title V Permit program thresholds. Only the potential or permitted emissions decreased as the actual emissions did not necessarily decrease

Y☒ N☒ **a. Did that lead to a change in the total fees collected either due to sources getting out of title V or improving their compliance?**

Theoretically, if a source lowered their permitted emissions to stay out of the Title V permit program, this would result in a decrease in annual emission fees collected from all 1,400 permitted sources. Any reduction in the amount of emission fees collected due to the Title V permit program was not significant.

Y☐ N☒ **b. Did that lead to a change in the fee rate (dollars/ton rate)?**

The VCAPCD Rule 42 fee rate (dollars/ton) is increased on an as-needed basis based on the overall VCAPCD budget situation or a rise in the Consumer Price Index. The fee rate is not revised based on a study or review of the VCAPCD Title V universe.

8. Has title V resulted in improved implementation of your air program in any of the following areas due to title V:

Y☐ N☒ **a. netting actions**

Y☐ N☒ **b. emission inventories**

Y☐ N☒ **c. past records management (e.g., lost permits)**

Y☒ N☐ **d. enforceability of PTE limits (e.g., consistent with guidance on enforceability of PTE limits such as the June 13, 1989 guidance)**

Netting actions, emission inventories, and records management did not change due to the Title V permit program as all were adequate prior to the Title V permit program. As a part of the Title V Permit program, the VCAPCD has adopted Rule 35, "Elective Emission Limits", and Rule 76, "Federally Enforceable Limits on Potential to Emit". These rules provide sources an ability to establish federally enforceable PTE limits that keep them below the emission thresholds of the Title V Permit Program.

Y☐ N☒ **e. identifying source categories or types of emission units with pervasive or persistent compliance problems; etc.**

Prior to Title V, the VCAPCD had a robust permitting and compliance program.

Y☒ N☐ **f. clarity and enforceability of NSR permit terms**

Especially through the implementation of CAM and the streamlining of multiple emission limit requirements.

Y☒ N☐ **g. better documentation of the basis for applicable requirements (e.g., emission limit in NSR permit taken to avoid PSD; throughput limit taken to stay under MACT threshold)**

Yes. As discussed above, PTE limits established through Rule 35 or Rule 76 to stay below Title V permit thresholds. Also, through the statement of basis and the "mini" statement of basis in permit attachments, the Title V permit provides detailed, additional documentation not included in a non-Title V permit.

Y☒ N☐ **h. emissions trading programs**

Yes, as it applies to the Title IV Acid Rain Program.

Y☒ N☐ **i. emission caps**

Yes, a few Title V permits now have very detailed emisison caps.

Y☐ N☒ **j. other (describe)**

Y☐ N☐ **9. If yes to any of the above, would you care to share how this improvement came about? (e.g., increased training; outreach; targeted enforcement)?**

Yes. The major area of improved implementation is the streamlining of multiple emission limits and requirements. The VCAPCD followed the guidance of EPA white papers on the subject. As discussed above, the most common VCAPCD streamlining example is for gas turbines that are simultaneously subject to the BACT requirements of Rule 26.2, "New Source Review – Requirements", Rule 74.23, "Stationary Gas Turbines", NSPS GG or NSPS KKKK for gas turbines, Rule 54, "Sulfur Compounds", Rule 64, "Sulfur Content of Fuels", and sometimes 40 CFR Part 64, "Compliance Assurance Monitoring". There are approximately six (6) Title V Permits that utilize streamlining for gas turbines. These include Title V Permit Nos. 00015, 00157, 00214, 01267, 01494, and 07891.

Y☒ N☐ **10. Has title V changed the way you conduct business?**

Not significantly. However, in general I would say that the Title V permit program has improved the quality of the VCAPCD Authority to Construct process through better, clearer, and more enforceable permit conditions and increased documentation.

Y☐ N☒ **a. Are there aspects of the title V program that you have extended to other program areas (e.g., require certification of accuracy and completeness for pre-construction permit applications and reports; increased records retention; inspection entry requirement language in NSR permits). If yes, describe.**

Y☒ N☐ **b. Have you made changes in how NSR permits are written and documented as a result of lessons learned in title V (e.g., permit terms more clearly written; use of a statement of basis to document decision making)? If yes, describe.**

Yes, as described above I would say that the Title V permit program has improved the quality of the VCAPCD Authority to Construct process through better, clearer, and more enforceable permit conditions and increased documentation in the engineering analysis.

Y☒ N☐ **c. Do you work more closely with the sources? If yes, describe.**

I would say yes in general. This is probably due more to the everyday use of email as opposed to the Title V permit program alone.

Y☐ N☒ **d. Do you devote more resources to public involvement? If yes, describe.**

Y☐ N☒ **e. Do you use information from title V to target inspections and/or enforcement?**

Y☐ N☒ **f. Other ways? If yes, please describe.**

Y☐ N☒ **11. Has the title V fee money been helpful in running the program? Have you been able to provide:**

Y☐ N☒ **a. better training?**

Y☐ N☒ **b. more resources for your staff such as CFRs and computers?**

For a and b above, the Title V permit program has not significantly increased the amount of fees collected from VCAPCD permitted sources.

Y☐ N☒ **c. better funding for travel to sources?**

Not applicable as all sources are within relatively short driving distance of the VCAPCD office.

Y☐ N☒ **d. stable funding despite fluctuations in funding for other state programs?**

Not really applicable as Title V income is not significantly greater than the income that would have been received anyway from our universe of Title V sources through emission fees and

permit processing fees already required by Rule 42, "Permit Fees".

Y☐ N☒ **e. incentives to hire and retain good staff?**

Not really applicable as described above turnover has been very low in the VCAPCD Title V Program.

Y☐ N☒ **f. are there other benefits of the fee program? Describe.**

Y☒ N☐ **12. Have you received positive feedback from citizens?**

On the very few Title V permits that were reviewed by citizens, I did receive positive feedback that the permits were very detailed and seemed to do a good job at implementing the VCAPCD rules and regulations.

Y☐ N☒ **13. Has industry expressed a benefit of title V? If so, describe.**

Y☐ N☒ **14. Do you perceive other benefits as a result of the title V program? If so, describe.**

Y☐ N☒ **15. Other comments on benefits of title V?**

Good Practices not addressed elsewhere in this questionnaire

Are any practices employed that improve the quality of the permits or other aspects of the title V program that are not addressed elsewhere in this questionnaire?

I would like to expand on the concept of VCAPCD "permit attachments". A permit attachment provides a very detailed applicability statement (a "mini" statement of basis) and detailed and consistent permit conditions across all Title V permits that utilize a specific permit attachment. For example, VCAPCD Rule 74.9, "Stationary Internal Combustion Engines", applies to both natural gas-fired and diesel fuel engines. Of these engines, it also applies differently to emergency engines and prime engines. For natural gas engines, Rule 74.9 has different emission limitations for rich burn and lean burn engines. Needless to say, Rule 74.9 has many different compliance options. The VCAPCD has generated about ten (10) different Rule 74.9 permit attachments that are each unique with their own applicability statements. The different emission limits, monitoring, recordkeeping and reporting requirements are detailed in each Rule 74.9 permit attachment based on the specific applicability of the permit attachment.

EPA assistance not addressed elsewhere in this questionnaire

Is there anything else EPA can do to help your title V program?

At this time "no" as our Title V permit program is fairly well established. However, this evaluation of the VCAPCD Title V Program should be able to make our program better. In hindsight, perhaps more comments by EPA on proposed permits, either positive or negative, would have contributed to the overall effectiveness of the VCAPCD Title V Permit Program.

Appendix C. U.S. EPA Statement of Basis Guidance

Table of SOB guidance

Elements	Region 9's Febuary 19, 1999 letter to SLOC APCD	NOD to Texas' part 70 Program (January 7, 2002)	Region 5 letter to state of Ohio (December 20, 2001)	Los Medanos Petition Order (May 24, 2004)	Bay Area Refinery Petition Orders (March 15, 2005)	EPA's August 1, 2005 letter regarding Exxon Mobil proposed permit	Petition No. V-2005-1 (February 1, 2006) (Onyx Order)	EPA's April 30, 2014 Memorandum: Implementation Guidance on ACC Reporting and SOB Requiremetns for Title V Operating Permits
New Equipment	Additions of permitted equipment which were not included in the application					√		
Insignificant Activities and portable equipment	Identification of any applicable requirements for insignificant activities or State-registered portable equipment that have not previously been identified at the Title V facility					√		
Streamlining	Multiple applicable requirements streamlining demonstrations		Streamlining requirements	Streamlining analysis		√		
Permit Shields	Permit shields	The basis for applying the permit shield	√	Discussion of permit shields	Basis for permit shield decisions	√		
Alternative Operating Scenarios and Operational Flexibility	Alternative operating scenarios	A discussion of any operational flexibility that will be utilized at the facility.	√			√		
Compliance Schedules	Compliance Schedules				Must discuss need for compliance schedule for multiple NOVs, particularly any unresolved/outstanding NOVs	Must discuss need for compliance schedule for any outstanding NOVs		
CAM	CAM requirements					√		
PALs	Plant wide allowable emission limits (PAL) or other voluntary limits					√		
Previous Permits	Any district permits to operate or authority to construct permits		Explanation of any conditions from previously issued permits that are not being transferred to the title V permit	A basis for the exclusion of certain NSR and PSD conditions contained in underlying ATC permits		√		
Periodic Monitoring Decisions	Periodic monitoring decisions, where the decisions deviate from already agreed upon levels (eg. Monitoring decisions agreed upon by the district and EPA either through: the Title V periodic monitoring workgroup; or another Title V permit for a	The rationale for the monitoring method selected	A description of the monitoring and operational restrictions requirements	1) recordkeeping and period monitoring that is required under 40 CFR 70.6(a)(3)(i)(B) or district regulation	The SOB must include a basis for its periodic monitoring decisions (adequacy of chosen monitoring or justification for not	The SOB must include a basis for its periodic monitoring decisions. Any emissions factors, exhaust characteristics, or other assumptions or inputs used to justify no periodic monitoring is required, should be included in SOB		√

	similar source). These decisions could be part of the permit package or reside in a publicly available document.			2) Ensure that the rationale for the selected monitoring method or lack of monitoring is clearly explained and documented in the permit record.	requiring periodic monitoring)			
Facility Description		A description of the facility	√			√		
Applicability Determinations and Exemptions		Any federal regulatory applicability determinations	Applicability and exemptions	1) Applicability determinations for source specific applicable requirements 2) Origin or factual basis for each permit condition or exemption	SOB must discuss the Applicability of various NSPS, NESHAP and local SIP requirements and include the basis for all exemptions	SOB must discuss the Applicability of various NSPS, NESHAP and local SIP requirements and include the basis for all exemptions		√
General Requirements			Certain factual information as necessary	Generally the SOB should provide "a record of the applicability and technical issues surrounding the issuance of the permit."		√	√	√

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

February 19, 1999

Mr. David Dixon
Chairperson, Title V Subcommittee
San Luis Obispo County
Air Pollution Control District
3433 Roberto Court
San Luis Obispo, CA 93401

Dear Mr. Dixon:

I am writing to provide a final version of our response to your July 2, 1998 letter in which you expressed concern about Region IX's understanding of the Subcommittee's tentative resolution to the 45-day EPA review period issue. I have also included a summary of the Subcommittee's agreement on two title V implementation issues originally raised by some Subcommittee members at our meeting on August 18, 1998. Our response reflects many comments and suggestions we have received during the past several months from members of the Title V Subcommittee and EPA's Office of General Counsel. In particular, previous drafts of this letter and the enclosure have been discussed at Subcommittee meetings on October 1, 1998, November 5, 1998, January 14, 1999, and February 17, 1999. Today's final version incorporates suggested changes as discussed at these meetings and is separated into two parts: Part I is "guidance" on what constitutes a complete Title V permit submittal; and Part II is a five-point process on how to better coordinate information exchange during and after the 45-day EPA review period.

We will address the letter to David Howekamp from Peter Venturini dated August 7, 1998 regarding permits issued pursuant to NSR rules that will not be SIP approved in the near future. This issue was also discussed at the August 18 Title V Subcommittee meeting.

I appreciate your raising the issues regarding the 45-day EPA review clock to my attention. Your efforts, along with the efforts of other Title V Subcommittee members, have been invaluable towards resolving this and other Title V implementation issues addressed in this letter. The information in the enclosure will clarify Title V permitting expectations between Region IX and the California Districts and will improve coordination of Title V permit information. It is important to implement this immediately, where necessary, so the benefits of this important program can be fully realized as soon as possible in the state of California as well as other states across the country.

If you have any questions please do not hesitate to call me at (415) 744-1254.

Sincerely,

Matt Haber
Chief, Permits Office

Enclosure

cc: California Title V Contacts
California Air Pollution Control Officers
Ray Menebroker, CARB
Peter Venturini, CARB

Enclosure

Neither the guidance in Part I nor the process in Part II replace or alter any requirements contained in Title V of the Clean Air Act or 40 CFR Part 70.

PART I. Guidance on Information Necessary to Begin 45-day EPA Review

A complete submittal to EPA for a proposed permit consists of the application (if one has not already been sent to EPA), the proposed permit, and a statement of basis. If applicable to the Title V facility (and not already included in the application or proposed permit) the statement of basis should include the following:

- additions of permitted equipment which were not included in the application;
- identification of any applicable requirements for insignificant activities or State-registered portable equipment that have not previously been identified at the Title V facility,
- outdated SIP requirement streamlining demonstrations,
- multiple applicable requirements streamlining demonstrations,
- permit shields,
- alternative operating scenarios,
- compliance schedules,
- CAM requirements,
- plant wide allowable emission limits (PAL) or other voluntary limits,
- any district permits to operate or authority to construct permits;
- periodic monitoring decisions, where the decisions deviate from already agreed-upon levels (e.g., monitoring decisions agreed upon by the district and EPA either through: the Title V periodic monitoring workgroup; or another Title V permit for a similar source). These decisions could be part of the permit package or could reside in a publicly available document.

Part II - Title V Process

The following five-point process serves to clarify expectations for reviewing Title V permits and coordinating information on Title V permits between EPA Region IX ("EPA") and Air Pollution Districts in California ("District"). Districts electing to follow this process can expect the following. Districts may, at their discretion, make separate arrangements with Region IX to implement their specific Title V permit reviews differently.

Point 1: The 45-day clock will start one day after EPA receives all necessary information to adequately review the title V permit to allow for internal distribution of the documents. Districts may use return receipt mail, courier services, Lotus Notes, or any other means they wish to transmit a package and obtain third party assurance that EPA received it. If a District would like written notice from EPA of when EPA received the proposed title V permit, the District should notify EPA of this desire in writing. After receiving the request, Region IX will provide written response acknowledging receipt of permits as follows:

(Date)

Dear (APCO):

We have received your proposed Title V permit for (Source Name) on (Date).
If, after 45-days from the date indicated above, you or anyone in your office has not heard from us regarding this permit, you may assume our 45-day review period is over.

Sincerely,

Matt Haber
Chief, Permits Office

Point 2: After EPA receives the proposed permit, the permit application, and all necessary supporting information, the 45-day clock may not be stopped or paused by either a District or EPA, except when EPA approves or objects to the issuance of a permit.

Point 3: The Districts recognize that EPA may need additional information to complete its title V permit review. If a specific question arises, the District involved will respond as best it can by providing additional background information, access to background records, or a copy of the specific document.

The EPA will act expeditiously to identify, request and review additional information and the districts will act expeditiously to provide additional information. If EPA determines there is a

basis for objection, including the absence of information necessary to review adequately the proposed permit, EPA may object to the issuance of the permit. If EPA determines that it needs more information to reach a decision, it may allow the permit to issue and reopen the permit after the information has been received and reviewed.

Point 4: When EPA objects to a permit, the Subcommittee requested that the objection letter identify why we objected to a permit, the legal basis for the objection, and a proposal suggesting how to correct the permit to resolve the objection.

It has always been our intent to meet this request. In the future, when commenting on, or objecting to Title V permits, our letters will identify recommended improvements to correct the permit. For objection letters, EPA will identify why we objected to a permit, the legal basis for the objection, and details about how to correct the permit to resolve the objection. Part 70 states that "Any EPA objection...shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections."

Point 5: When EPA objects to a permit, and a District has provided information with the intent to correct the objection issues, the Subcommittee members requested a letter from EPA at the end of the 90-day period stating whether the information provided by the District has satisfied the objection.

While we agree with the Districts' desire for clear, written communication from EPA, a written response will not always be possible by the 90th day because the regulations allow a District 90 days to provide information. To allow EPA ample time to evaluate submitted information to determine whether the objection issues have been satisfied, we propose establishing a clear protocol. The following protocol was agreed to by members of the Subcommittee:

1. within 60 days of an EPA objection, the District should revise and submit a proposed permit in response to the objection;

2. within 30 days after receipt of revised permit, EPA should evaluate information and provide written response to the District stating whether the information provided by the District has satisfied the objection.

December 20, 2001

(AR-18J)

Robert F. Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
122 South Front Street
P. O. Box 1049
Columbus, Ohio 43266-1049

Dear Mr. Hodanbosi:

I am writing this letter to provide guidelines on the content of an adequate statement of basis (SB) as we committed to do in our November 21, 2001, letter. The regulatory basis for a SB is found in 40 C.F.R. § 70.7(a)(5) and Ohio Administrative Code (OAC) 3745-77-08(A)(2) which requires that each draft permit must be accompanied by "a statement that sets forth the legal and factual basis for the draft permit conditions." The May 10, 1991, preamble also suggests the importance of supplementary materials.

> "[United States Environmental Protection Agency (USEPA)]...can object to the issuance of a permit where the materials submitted by the State permitting authority to EPA do not provide enough information to allow a meaningful EPA review of whether the proposed permit is in compliance with the requirements of the Act." (56 FR 21750)

The regulatory language is clear in that a SB must include a discussion of decision-making that went into the development of the Title V permit and to provide the permitting authority, the public, and the USEPA a record of the applicability and technical issues surrounding issuance of the permit. The SB is part of the historical permitting record for the permittee. A SB generally should include, but not be limited to, a description of the facility to be permitted, a discussion of any operational flexibility that will be utilized, the basis for applying a permit shield, any regulatory applicability determinations, and the rationale for the monitoring methods selected. A SB should specifically reference all supporting materials relied upon, including the applicable statutory or regulatory provision.

While not an exhaustive list of what should be in a SB, below are several important areas where the Ohio Environmental Protection Agency's (OEPA) SB could be improved to better meet the intent of Part 70.

Discussion of the Monitoring and Operational Requirements
OEPA's SB must contain a discussion on the monitoring and operational restriction provisions that are included for each emission unit. 40 C.F.R. §70.6(a) and OAC 3745-77-07(A) require that monitoring and operational requirements and limitations be included in the permit to assure compliance with all applicable requirements at the time of permit issuance. OEPA's selection of the specific monitoring, including parametric monitoring and recordkeeping, and operational requirements must be explained in the SB. For example, if the permitted compliance method for a grain-loading standard is maintaining the baghouse pressure drop within a specific range, the SB must contain sufficient information to support the conclusion that maintaining the pressure drop within the permitted range demonstrates compliance with the grain-loading standard.

The USEPA Administrator's decision in response to the Fort James Camas Mill Title V petition further supports this position. The decision is available on the web at http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/fort_james_decision1999.pdf. The Administrator stated that the rationale for the selected monitoring method must be clear and documented in the permit record.

Discussion of Applicability and Exemptions
The SB should include a discussion of any complex applicability determinations and address any non-applicability determinations. This discussion could include a reference to a determination letter that is relevant or pertains to the source. If no separate determination letter was issued, the SB should include a detailed analysis of the relevant statutory and regulatory provisions and why the requirement may or may not be applicable. At a minimum, the SB should provide sufficient information for the reader to understand OEPA's conclusion about the applicability of the source to a specific rule. Similarly, the SB should discuss the purpose of any limits on potential to emit that are created in the Title V permit and the basis for exemptions from requirements, such as exemptions from the opacity standard granted to emissions units under OAC rule 3745-17-07(A). If the permit shield is granted for such an exemption or non-applicability determination, the permit shield must also provide the determination or summary of the determination. See CAA Section 504(f)(2) and 70.6(f)(1)(ii).

Explanation of any conditions from previously issued permits that are not being transferred to the Title V permit
In the course of developing a Title V permit, OEPA may decide that an applicable requirement no longer applies to a facility or otherwise not federally enforceable and, therefore, not necessary in the Title V permit in accordance with USEPA's "White Paper for Streamlined Development of the Part 70 Permit Applications" (July 10, 1995). The SB should include the rationale for such a determination and reference any supporting materials relied upon in the determination.

I will also note that for situations that not addressed in the July 10, 1995, White Paper, applicable New Source Review requirements can not be dropped from the Title V permit without first revising the permit to install.

Discussion of Streamlining Requirements

The SB should include a discussion of streamlining determinations. When applicable requirements overlap or conflict, the permitting authority may choose to include in the permit the requirement that is determined to be most stringent or protective as detailed in USEPA's "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program" (March 5, 1996). The SB should explain why OEPA concluded that compliance with the streamlined permit condition assures compliance with all the overlapping requirements.

Other factual information

The SB should also include factual information that is important for the public to be aware of. Examples include:

1. A listing of any Title V permits issued to the same applicant at the plant site, if any. In some cases it may be important to include the rationale for determining that sources are support facilities.
2. Attainment status.
3. Construction and permitting history of the source.
4. Compliance history including inspections, any violations noted, a listing of consent decrees into which the permittee has entered and corrective action(s) taken to address noncompliance.

I do understand the burden that the increased attention to the SB will cause especially during this time when OEPA has been working so hard to complete the first round of Title V permit issuance. I do hope that you will agree with me that including the information listed above in OEPA's SB will only improve the Title V process. If you would like examples of other permitting authorities' SB, please contact us. We would be happy to provide you with some. I would also mention here that this additional information should easily fit in the format OEPA currently uses for its SB. We look forward to continued cooperation between our offices on this issue. If you have any questions, please contact Genevieve Damico, of my staff, at (312) 353-4761.

Sincerely yours,

/s/

Stephen Rothblatt, Chief
Air Programs Branch

address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–280 Filed 1–4–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[TX–FRL–7126–1]

Notice of Deficiency for Clean Air Act Operating Permits Program; State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act (Act) and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this Notice of Deficiency (NOD) for the Texas Clean Air Act title V Operating Permits Program. The Notice of Deficiency is based upon EPA's finding that the State's periodic monitoring regulations, compliance assurance monitoring (CAM) regulations, periodic monitoring and CAM general operating permits (GOPs), statement of basis requirement, applicable requirement definition, and potential to emit registration regulation do not meet the minimum federal requirements of the Act and 40 CFR part 70. Publication of this notice is a prerequisite for withdrawal of Texas' title V program approval, but EPA is not withdrawing the program through this action.

EFFECTIVE DATE: January 7, 2002. Because this NOD is an adjudication and not a final rule, the Administrative Procedure Act's 30–day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Jole C. Luehrs, Chief, Air Permits Section, Multimedia Planning & Permitting Division, Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7250.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' means EPA.

Table of Contents

I. Description of Action

We are publishing this NOD for the Texas Clean Air Act (CAA or Act) title V program, which was granted interim approval on June 25, 1996. 61 FR 32693.[1] On May 22, 2000, we promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. 65 FR 32035. The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, we agreed to publish a document in the **Federal Register** that would alert the public that it may identify and bring to our attention alleged programmatic and/or implementation deficiencies in title V programs, and that we would respond to the public's allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document (March 11, 2001).

Public Citizen, on behalf of the American Lung Association of Texas, Environmental Defense, the law firm of Henry, Lowerre & Federick, Lone Star Chapter of the Sierra Club, Texas Center for Policy Studies, Sustainable Energy and Economic Development Coalition, Texas Campaign for the Environment, Galveston Houston Association for Smog Prevention, Neighbors for Neighbors, and Texas Impact (collectively referred to as ''commenters'') filed comments with EPA alleging several deficiencies with respect to the Texas title V program (Comment Letter). We have completed our review of those comments. We have identified deficiencies relating to Texas' periodic monitoring regulations, CAM regulations, periodic monitoring and CAM GOPs, statement of basis requirement, applicable requirement definition, and potential to emit registration regulation. These deficiencies are discussed below.

Under EPA's permitting regulations, citizens may, at any time, petition EPA regarding alleged deficiencies in state title V operating permitting programs. In addition, EPA may identify deficiencies

[1] On December 6, 2001, we promulgated full approval of Texas' Operating Permits Program. 66 FR 63318.

on its own. If, in the future, EPA agrees with a new citizen petition or otherwise identifies deficiencies, EPA may issue a new NOD or take other affirmative actions.

II. Deficiencies

Below is a discussion of the comments that we have identified as deficiencies, and by this notice are requesting the State to correct the deficiencies.

A. Periodic Monitoring Regulations

The commenters allege that instead of ensuring that every title V permit includes periodic monitoring, as required by 40 CFR 70.6(a)(3)(i)(B), 30 TAC 122.142(c) makes periodic monitoring optional because it only requires permits to include periodic monitoring ''as required by the executive director.'' [2] Further, the commenters contend that the Texas Natural Resource Conservation Commission's (TNRCC) rules specifically state that no facility need submit an application for periodic monitoring for approximately two years, or longer.[3] Therefore, the commenters conclude that these provisions are inconsistent with federal requirements. The commenters also assert that TNRCC's failure to require timely periodic monitoring has caused the issuance of numerous defective title V permits. Comment Letter at 12.

According to TNRCC,

> periodic monitoring is implemented in two phases. The first phase is at initial issuance for those emission limitations or standards with no monitoring, testing, recordkeeping, or reporting. The second phase is through the GOPs for those emission limitations or standards which only require a one-time test at start-up or when requested by the EPA. Each permit will contain periodic monitoring as appropriate.

26 *TexReg* 3747, 3785 (May 25, 2001).[4]

However, TNRCC's approach to implementing periodic monitoring does not comply with the requirements of part 70. The requirement for periodic monitoring is set forth in 40 CFR 70.6(a)(3)(i)(B), which requires that each permit must include:

> where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit * * *.''

A review of the relevant Texas regulations reveals that Texas' periodic monitoring regulations do not meet the requirements of part 70 and must be revised. Under 30 TAC 122.600, the periodic monitoring requirements of 30 TAC 122.142(c) are implemented through a periodic monitoring GOP, or a periodic monitoring case by case determination, in accordance with 30 TAC Chapter 122, Subchapter G—Periodic Monitoring.[5] TNRCC's use of a phased approach through the GOP process does not ensure that all permits have periodic monitoring *when they are issued*, as required by 40 CFR 70.6(a)(3)(i)(B). The regulations do not meet the requirements of part 70 because a facility does not have to apply for a periodic monitoring GOP until two years after the periodic monitoring GOP has been issued. 30 TAC 122.604(a)(1). Since the two year period starts after issuance of the GOP, a source's title V permit could be in effect for longer than two years before periodic monitoring is incorporated into the permit.[6] Therefore, this regulatory deficiency must be corrected. TNRCC must revise its regulations to ensure that *all title V permits, including all GOPs, when issued,* contain periodic monitoring requirements that meet the requirements of 40 CFR 70.6(a)(3)(i)(B).

In addition, in implementing the periodic monitoring requirement, TNRCC must ensure that each permit includes monitoring sufficient to assure compliance with the terms and conditions of the permit. *See* 40 CFR 70.6(c)(1).[7] Each permit must also include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. *See* 40 CFR 70.6(a)(3)(i)(B). Thus, if the periodic monitoring for a particular applicable requirement is inadequate to assure compliance with the terms and conditions of the permit, 40 CFR 70.6(c)(1) and 30 TAC 122.142(b)(2)(B)(ii) require TNRCC to provide enhanced monitoring to assure compliance with the permit.

B. Compliance Assurance Monitoring Regulations

The commenters allege that TNRCC's permit content rules do not require that title V permits include testing and monitoring sufficient to assure compliance. Instead, the rules provide that applications for CAM need not be submitted for approximately two years, and maybe longer. 30 TAC 122.704.[8] Thus, the commenters assert that TNRCC's failure to require sufficient testing and monitoring in its title V permits is a defect in its title V program and has resulted in the issuance of many ineffective and incomplete title V permits. Comment Letter at 12—14.

According to TNRCC, CAM, like periodic monitoring, is also being implemented in a phased approach:

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[2] 30 TAC 122.142(c) provides that ''each permit shall contain periodic monitoring requirements, as required by the executive director, that are designed to produce data that are representative of the emission unit's compliance with the applicable requirements.''

[3] 30 TAC 122.604(a)(1) & (2) provide that ''for an emission unit that is subject to an emission limitation or standard on or before the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following issuance of the periodic monitoring GOP. For an emission unit that becomes subject to an emission limitation or standard after the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to the emission limitation or standard.''

The provisions of 30 TAC Chapter 122, Subchapter G (§ 122.600–122.612) ''[do] not apply to emission limitations or standards for which the executive director has determined that the applicable requirement has sufficient periodic monitoring (which may consistent of recordkeeping * * *.'' 30 TAC 122.602(b).

[4] However, a one-time test is not considered periodic monitoring. *Appalachian Power Company v. EPA*, 208 F.3d 1015, 1028 (D.C. Cir. 2000).

[5] 30 TAC 122.600(b) does allow TNRCC to establish periodic monitoring requirements through the permitting process for specific emission limitations or standards to satisfy 30 TAC 122.142(c).

[6] If the emission unit becomes subject to an emission limitation or standard after the issuance date of a period monitoring GOP, the permit holder must submit the application no later than 30 days after the end of the second permit anniversary following the date that the emission unit became subject to the emission limitation or standard. 30 TAC 122.604(a)(2).

[7] Also note that

> Where the applicable requirement already requires periodic testing or instrumental or non-instrumental monitoring, however, * * * the periodic monitoring rule in § 70.6(a)(3) does not apply even if that monitoring is not sufficient to assure compliance. In such cases, the separate regulatory standard at § 70.6(c)(1) applies instead. By its terms, § 70.6(c0(1)—like the statutory provisions it implements—calls for sufficiency reviews of periodic testing and monitoring in applicable requirements, and enhancement of that testing or monitoring through the permit as necessary to be sufficient to assure compliance with the terms and conditions of the permit. *In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Petition No. VIII–00–1 at 18–19 (Administrator November 16, 2000).

[8] 30 TAC 122.704(a)(1) & (2) provide that ''for an emission unit that subject to this subchapter on or before the issuance unit that subject to this subchapter on or before the issuance date of a CAM GOP containing an emission limitation or standard that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following issuance of the CAM GOP. For an emission unit that becomes subject to this subchapter after the issuance date of a CAM GOP that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to this subchapter.''

The executive director is implementing CAM and periodic monitoring through a phased approach based on permit issuance and SIC codes. The commission considered several factors when developing the schedule for application due dates. Due to the technical requirements in 40 CFR part 64, compliance with CAM and periodic monitoring may require permit holders to purchase and install new equipment or conduct performance testing. The application submittal schedule should allow permit holders a reasonable amount of time to budget for, purchase, install, and test equipment necessary to comply with CAM and periodic monitoring requirements. Furthermore, the schedule allows the executive director time to develop comprehensive monitoring options for inclusion in various CAM and periodic monitoring GOPs issued over time. Finally, under the schedule, permit holders will submit applications to the executive director in manageable numbers throughout each calendar year. The executive director will be able to review these applications in a more timely fashion than if all applications were due at the same time.

26 *TexReg* at 3786–87.

CAM is implemented through 40 CFR part 64 and 40 CFR 70.6(a)(3)(i)(A). 40 CFR 64.5 provides that CAM applies at permit renewal unless the permit holder has not filed a title V permit application by April 20, 1998, or the title V permit application has not been determined to be administratively complete by April 20, 1998. CAM also applies to a title V permit holder who filed a significant permit revision under title V after April 20, 1998. However, in this case, CAM would only apply to pollutant specific emission units for which the proposed permit revision is applicable.

40 CFR 70.6(a)(3)(i)(A) requires that each permit include ''all monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter [CAM] * * * ''

The TNRCC implements CAM through either CAM GOPs or a CAM case-by case determination, in accordance with 30 TAC Chapter 122, Subchapter G—Compliance Assurance Monitoring. 30 TAC 122.700(a). The TNRCC's use of a phased approach does not ensure that all permits will have the CAM required by 40 CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5 because a facility does not have to apply for a CAM GOP until two years after the CAM GOP has been issued. Since the two year period starts after issuance of the GOP, a source's title V permit could be renewed (or a significant permit revision issued) before CAM is incorporated into the permit.[9] The TNRCC regulations do not meet the requirements of the Act and part 70 and TNRCC must revise its regulations to ensure that all title V permits, including all GOPs, will have the CAM required by CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5.

C. Periodic Monitoring and Compliance Assurance Monitoring General Operating Permits

The commenters allege that periodic monitoring and CAM are permit conditions which are required to be included in each title V permit. The TNRCC, however, is issuing title V permits without periodic monitoring or CAM, and allowing facilities to utilize the GOP process to adopt periodic monitoring and CAM. The commenters assert that because periodic monitoring and CAM are permit conditions, and not operating permits, the periodic monitoring and CAM GOPs do not comply with the requirement in 40 CFR 70.6(d) that GOPs must ''comply with all requirements applicable to other part 70 permits.'' For example, the commenters claim the periodic monitoring and CAM GOPs do not include enforceable emission limitations and standards, a schedule of compliance, and a requirement that the permittee submit to the permitting authority no less often than every six months, the results of any required monitoring, as required by title V. The commenters also assert that the CAM and periodic monitoring GOPs do not apply to ''numerous similar sources'', as required by 40 CFR 70.6(d). They apply statewide to any source that has to comply with applicable requirements which are listed in the GOP. Therefore, the commenters believe that CAM and periodic monitoring GOPs simply do not meet title V's definition of or requirements for general permits. Comment Letter at 21–22.

The TNRCC argues that

> the CAM and periodic monitoring GOPs were not designed to mimic a [site operating permit (SOP)]; therefore, the content will not be identical to the requirements of 40 CFR 70.6(a) and (b). The CAM and periodic monitoring GOPs are unique in that the information submitted will become a part of the existing SOP or GOP and are supplemental to an existing operating permit. The commission believes that Part 70 implements the requirements listed in 42 U.S.C. 7661b, Permit Applications. The commission believes its application requirement is consistent with 40 CFR 70.6(a) and (b). These requirements have been incorporated into a previously issued SOP or GOP and are not required for CAM or periodic monitoring GOP applications.

26 *TexReg* at 3786.

The TNRCC's use of GOPs to implement periodic monitoring and CAM does not comply with part 70. The requirements for GOPs are set forth in 40 CFR 70.6(d). 40 CFR 70.6(d)(1) provides that ''any general permit shall comply with all requirements applicable to other part 70 permits.'' The requirements for part 70 permits are set forth in 40 CFR 70.6. A review of Periodic Monitoring GOP No. 1 and CAM GOP No. 1 shows that the terms and conditions of these GOPs only relate to the respective monitoring requirements, monitoring options, and related monitoring requirements for certain applicable requirements.[10] Thus, they are missing a number of the requirements of 40 CFR 70.6, and therefore do not meet the requirements for GOPs set forth in 40 CFR 70.6(d). The fact that the missing requirements may be in another permit or permit application is irrelevant. 40 CFR 70.6(d) requires that all the requirements of 40 CFR 70.6 be included in a GOP. Therefore, Texas must revise its regulations to ensure that each GOP issued includes all of the requirements in 40 CFR 70.6, including the periodic monitoring and CAM requirements discussed in Sections II.A. and B above.[11] Furthermore, Texas must ensure that any GOP issued covers similar sources, as required by 40 CFR 70.6(d).

D. Statement of Basis Requirement

The commenters claim that TNRCC's rules do not require that it prepare and make available a statement setting forth the ''legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)'', otherwise known as a ''statement of basis''.[12] Further, the commenters assert that there have been no statements of basis in the title V facility files they have reviewed. The files, however, do include a ''Technical Summary'', which includes a process description and tracks the facility's movement through the permitting process. The commenters claim that these ''Technical Summaries'' do not

[9] If the emission unit that becomes subject to Subchapter G after the issuance date of a CAM GOP that applies to that emission unit, the permit holder must submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to this subchapter. 30 TAC 122.704(a)(2).

[10] Periodic monitoring GOP No. 1 and CAM GOP No. 1 apply to nine different New Source Performance Standards, 40 CFR part 60, Subparts F, Y, CC, DD, HH, LL, NN, OOO, PPP; 30 TAC 111.111 (Visible Emissions), 30 TAC 111.151 (Emission Limits on Nonagricultural Processes), and 30 TAC 111.171 (Emission Limits on Agricultural Processes).

[11] Inclusion of CAM in GOPs is subject to the schedule set forth in 40 CFR 64.5.

[12] 40 CFR 70.7(a)(5).

explain the basis for the draft permit conditions. Therefore, the commenters contend that EPA should require TNRCC to prepare a statement of basis that meets the part 70 requirements. Comment Letter at 21–22.

According to TNRCC:

> [t]he executive director does not prepare a specific ''statement of basis'' for each permit, but rather has implemented this Part 70 provision by developing a permit that states a regulatory citation for each applicable requirement. The commission is unaware of any self-implementing statutory requirements that do not have parallel regulatory provisions. These permit conditions are based on the application and the technical review which includes a site inspection. The commission believes including this detail in the permits meets the requirements of Part 70 for including a statement of basis.

26 *TexReg* at 3769–70.

The TNRCC's approach to the ''statement of basis'' requirement does not comply with the requirements of part 70. 40 CFR 70.7(a)(5) requires that ''[t]he permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.'' For example, in the *Fort James Camas Mill* title V Petition Response, EPA stated that this section required that ''the rationale for the selected monitoring method must be clear and documented in the permit record.'' *In the Matter of Fort James Camas Mill*, Petition No. X–1999–1 at 8 (Administrator December 22, 2000).

Our review of TNRCC's regulations reveals that there is no state regulation corresponding to 40 CFR 70.7(a)(5). The ''Technical Summaries'' do not set forth the legal and factual basis for the draft permit conditions. Furthermore, the elements of the statement of basis may change depending on the type and complexity of the facility, and would also be subject to change because of future regulatory revisions. Accordingly, a statement of basis should include, but is not limited to, a description of the facility, a discussion of any operational flexibility that will be utilized at the facility, the basis for applying the permit shield, any federal regulatory applicability determinations, and the rationale for the monitoring methods selected.

Therefore, Texas must revise its regulations to require that it prepare and make available a statement setting forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions), and that this statement be sent to EPA and any person who requests it, as required by 40 CFR 70.7(a)(5). This provision will require TNRCC to explain why certain specific requirements, as set forth above, were included in the permit. *See In the Matter of Fort James Camas Mill*, Petition No. X–1999–1 at 8 (''rationale for selected monitoring method must be clear and documented in the permit record'').

E. Applicable Requirement Definition

The commenters allege that Texas' definition of ''applicable requirement'' does not include all applicable provisions of the Texas State Implementation Plan (SIP). For example, 30 TAC Chapter 101, Sections 101.1 through 101.30 (Subchapter A), are included in the Texas SIP. Yet the TNRCC only includes Subchapter H of Chapter 101 as an ''applicable requirement.'' Second, the commenters contend that the TNRCC's applicable requirement definition refers to Texas Administrative Code sections which may change without corresponding changes in the Texas SIP. Because title V facilities are obligated to comply with all provisions of the Texas SIP, the commenters assert that the Texas rules should generally state that any current provision of the Texas SIP is an applicable requirement. Comment Letter at 22–23.

The definition of applicable requirement in 40 CFR 70.2 includes, as they apply to emission units in a part 70 source, ''any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act, that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 CFR part 52]''. Thus, the phrase ''relevant requirements of the Act'' is not limited to requirements relating to permit content.'' [13]

A review of Chapter 101, Subchapter A reveals that a number of these regulations are applicable requirements of the Act, including, but not limited to, 30 TAC 101.1, 101.6, 101.7, and 101.11.[14] Therefore, TNRCC must revise its definition of ''applicable requirement'' in 30 TAC 122.10(2) to include all the applicable provisions of its SIP in its definition of applicable requirement.

However, contrary to the commenters' assertions, we have concluded there is no requirement that TNRCC adopt a definition to generally state that any current provision of the Texas SIP is an applicable requirement. A State may cite to specific provisions of its administrative code, as Texas has done. Failing to adopt the general definition as set forth in 40 CFR 70.2 may result in TNRCC having to revise its title V program if it adopts an applicable requirement elsewhere in the SIP that does not fit within its definition of applicable requirement in its title V regulations.

F. Potential to Emit Registration Regulation

The commenters state that although part 70 allows facilities to avoid title V permitting by limiting their potential to emit (PTE), EPA Guidance requires that the limits be practically enforceable. However, the commenters assert that 30 TAC 122.122(e), which allows a facility to keep all documentation of its PTE limitations on site without providing those documents to the State or to EPA, is not practically enforceable.[15] The public files on the facility would contain no information regarding the limitations that the facility has adopted. Neither the State nor EPA would know about the limitations unless they specifically inquire about them at the facility, and therefore these limits would not be practically enforceable. Thus, the commenters contend that EPA should require that any limitations Texas allows on PTE be recorded in public files and practically enforceable. Comment Letter at 26—27.

(a) For purposes of determining applicability of the Federal Operating Permit Program under this chapter, the owner or operator of stationary sources without any other federally enforceable emission rate may limit their sources' potential to emit by maintaining a certified registration of emissions, which shall be federally enforceable.

* * *

* * * * *

(d) In order to qualify for registrations of emissions under this section, the maximum emission rates listed in the registration must be less than those rates defined for a major source in § 122.10 of this title (relating to General Definitions).

(e) The certified registrations of emissions and records demonstrating compliance with such registration shall

[13] TNRCC has stated that it ''includes in the definition of applicable requirement those chapters and portions of chapters provided in the SIP that are *relevant to permit content*.'' 26 *TexReg* at 3759 (emphasis added).

[14] This is not an exhaustive list. We will work with TNRCC to identify all applicable requirements that must be included in its definition of applicable requirements, including any regulations outside of Chapter 101.

[15] 30 TAC 122.122 reads as follows:

be maintained on-site, or at an accessible designated location, and shall be provided, upon request, during regular business hours to representatives of the Texas Air Control Board or any air pollution control agency having jurisdiction.

According to TNRCC,

[it] agrees that a regulation limiting a site's potential to emit must be practically enforceable, but that certified registrations kept on site meet this requirement. The § 122.10 potential to emit definition specifies that ''any certified registration or preconstruction authorization restricting emissions * * * shall be treated as part of its design if the limitation is enforceable by the EPA.'' The EPA, in 40 CFR 52.21(b)(17), defines federally enforceable as ''all limitations and conditions which are enforceable by the administrator, including those * * * requirements within any applicable SIP.'' Since the commission submitted § 122.122 for incorporation into the SIP, the commission considers limits established under § 122.122 to be federally enforceable. Further, § 122.122 specifies that certain registration of emissions and records demonstrating compliance with the registration must be kept on-site, or at an accessible location, and shall, upon request, be provided to the commission or any air pollution control agency having jurisdiction. The commission does not believe that a certified registration of emissions must be submitted in order to be practically enforceable since the owner or operator must make the registration and any supporting documentation available during an inspection.

26 *TexReg* at 3761.

The TNRCC's approach to PTE limitations does not comply with the requirements of the Act. First, 30 TAC 122.122 is not part of the Texas SIP. The EPA has not approved 30 TAC 122.122, into the SIP. Therefore it is not federally enforceable.[16]

Even if the rule were federally enforceable, the rule must also be practically enforceable.[17] One of the requirements for practical enforceability is notice to the State.[18] Under 30 TAC 122.122, there is no requirement that the State be notified and the registrations are kept on site. Therefore, neither the public, TNRCC, or EPA know what the PTE limit is without going to the site. A facility could change its PTE limit several times without the public or TNRCC knowing about the change. Therefore, these limitations are not practically enforceable, and TNRCC must revise this regulation to make the regulation practically enforceable. The revised regulation must also be approved into the SIP before it, and the registrations, become federally enforceable.

III. Effect of Notice of Deficiency

Title V of the Act provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. To receive title V program approval, a state permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements that the state permitting authority have authority to ''assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter.'' CAA Section 502(b)(5)(A).

40 CFR 70.10(c)(1) provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70. This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority fails to promulgate or enact new authorities when necessary. 40 CFR 70.10(c)(1)(i)(A).

40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**. Today's notice satisfies this requirement and constitutes a finding of deficiency. If the permitting authority has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after publication of a notice of deficiency, EPA may take action under 40 CFR 70.10(b)(2). 40 CFR 70.10(b)(3) provides that, if a state has not corrected the deficiency within 18 months of the NOD, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the state has corrected the deficiencies identified in this notice within 18 months after signature of this notice.[19] 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of finding of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Texas' title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether Texas has taken significant action to correct the deficiencies.

IV. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2002.

Dated: December 20, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–298 Filed 1–4–02; 8:45 am]

BILLING CODE 6560–50–P

[16] Texas' definition of ''federally enforceable'' in 30 TAC 101.1(31) also supports this conclusion. Federally enforceable is defined as ''all limitations and conditions which are enforceable by the EPA administrator, including those requirements developed under 40 CFR parts 60 and 61, requirements within any applicable state implementation plan (SIP), any permit requirements established under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.''

[17] Seitz and Van Heuvelen, *Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit* (January 22, 1996), and Stein, *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits* (January 25, 1995)

[18] Stein, *Guidance on Enforceability Requirements for Limits Potential to Emit through SIP and § 112 Rules and General Permits* at 6–8.

[19] The EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18 month period.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7126–4]

Sole Source Aquifer Determination for Glen Canyon Aquifer System, Moab, Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination.

SUMMARY: Pursuant to section 1424(e) of the Safe Drinking Water Act, the Acting Regional Administrator of the U.S. Environmental Protection Agency (EPA) in Region VIII has determined that the Glen Canyon Aquifer System at Moab, Utah and the immediately adjacent recharge area is the sole or principal source of drinking water for the area. The area is located in southeast Utah extending from the City of Moab, southeast, encompassing approximately 76,000 acres in Townships 25 through 28 South and Ranges 21 through 24 East

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
LOS MEDANOS ENERGY	)	PETITION NO.
CENTER	)	ORDER RESPONDING TO
	)	PETITIONERS REQUEST THAT THE
MAJOR FACILITY REVIEW	)	ADMINISTRATOR OBJECT TO
PERMIT No. B1866,	)	ISSUANCE OF A STATE OPERATING
Issued by the Bay Area Air	)	PERMIT
Quality Management District	)	
_____	)	

ORDER DENYING IN PART AND GRANTING IN PART PETITION FOR OBJECTION TO PERMIT

On September 6, 2001, the Bay Area Air Quality Management District, ("BAAQMD" or "District") issued a Major Facility Review Permit to Los Medanos Energy Center, Pittsburg, California ("Los Medanos Permit" or "Permit"), pursuant to title V of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7661-7661f, CAA §§ 501-507. On October 12, 2001, the Environmental Protection Agency ("EPA") received a petition from Our Children's Earth Foundation ("OCE") and Californians for Renewable Energy, Inc., ("CARE") (collectively, the "Petitioners") requesting that the EPA Administrator object to the issuance of the Los Medanos Permit pursuant to Section 505(b)(2) of the Act, the federal implementing regulations found at 40 CFR Part 70.8, and the District's Regulation 2-6-411.3 ("Petition").

The Petitioners allege that the Los Medanos Permit (1) improperly includes an emergency breakdown exemption condition that incorporates a broader definition of "emergency" than allowed by 40 CFR § 70.6(g); (2) improperly includes a variance relief condition which is not federally enforceable; (3) fails to include a statement of basis as required by 40 CFR § 70.7(a)(5); (4) contains permit conditions that are inadequate under 40 CFR Part 70, namely that certain provisions are unenforceable; and (5) fails to incorporate certain changes OCE requested during the public comment period and agreed to by BAAQMD.

EPA has now fully reviewed the Petitioners' allegations. In considering the allegations, EPA performed an independent and in-depth review of the Los Medanos Permit; the supporting documentation for the Los Medanos Permit; information provided by the Petitioners in the Petition and in a letter dated November 21, 2001; information gathered from the Petitioners in a November 8, 2001 meeting; and information gathered from the District in meetings held on October 31, 2001, December 5, 2001, and February 7, 2002. Based on this review, I grant in part and deny in part the Petitioners' request that I "object to the issuance of the Title V Operating Permit for the Los Medanos Energy Center," and hereby order the District to reopen the Permit

for the reasons described below.

I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. In 1995, EPA granted interim approval to the title V operating permit program submitted by BAAQMD. 60 Fed. Reg. 32606 (June 23, 1995); 40 CFR Part 70, Appendix A. Effective November 30, 2001, EPA granted full approval to BAAQMD's title V operating permit program. 66 Fed. Reg. 63503 (December 7, 2001).

Major stationary sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes applicable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. See CAA §§ 502(a) and 504(a). The title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as "applicable requirements"), but does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, EPA, permitting authorities, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements. Thus, the title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under § 505(a) of the Act and 40 CFR § 70.8(a), permitting authorities are required to submit all operating permits proposed pursuant to title V to EPA for review. If EPA determines that a permit is not in compliance with applicable requirements or the requirements of 40 CFR Part 70, EPA will object to the permit. If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act and 40 CFR § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. To justify the exercise of an objection by EPA to a title V permit pursuant to section 505(b)(2), a petitioner must demonstrate that the permit is not in compliance with the requirements of the Act, including the requirements of Part 70. Part 70 requires that a petition must be "based only on objections to the permit that were raised with reasonable specificity during the public comment period. . ., unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period." 40 CFR § 70.8(d). A petition for administrative review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period and before receipt of the objection. If EPA objects to a permit in response to a petition and the permit has been issued, the permitting authority or EPA will modify, terminate, or revoke and reissue such a permit using the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

II. BACKGROUND

The Los Medanos Energy Center facility ("Facility"), formerly owned by Enron Corporation under the name Pittsburg District Energy Facility, is a natural gas-fired power plant presently owned and operated by Calpine Corporation. The plant, with a nominal electrical capacity of 555-megawatts ("MW"), is located in Pittsburg, California. The Facility received its final determination of compliance ("FDOC")[1] from the District in June, 1999, and its license to construct and operate from the California Energy Commission ("CEC")[2] on August 17, 1999. The Facility operates two large natural gas combustion turbines with associated heat recovery steam generators ("HRSG"), and one auxiliary boiler. The Facility obtained a revised authority to construct ("ATC")[3] permit from the District in March, 2001 to increase heat input ratings of the two HRSGs and the auxiliary boiler,[4] and to add a fire pump diesel engine and a natural gas-fired emergency generator. The Facility began commercial operation in July, 2001. The Facility emits nitrogen oxide ("NO_X"), carbon monoxide ("CO"), and particulate matter ("PM"), all of which are regulated under the District's federally approved or delegated nonattainment new source review ("NSR") and prevention of significant deterioration ("PSD") programs[5] or other District Clean Air Act programs.

On June 28, 2001, the District completed its evaluation of the title V application for the Facility and issued the draft title V Permit. Under the District's rules, this action started a simultaneous 30-day public comment period and a 45-day EPA review period. On August 1, 2001, Mr. Kenneth Kloc of the Environmental Law and Justice Clinic submitted comments to the

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[1] An FDOC describes how a proposed facility will comply with applicable federal, state, and BAAQMD regulations, including control technology and emission offset requirements of New Source Review. Permit conditions necessary to insure compliance with applicable regulations are also included.

[2] The FDOC served as an evaluation report for both the CEC's certificate and the District's authority to construct ("ATC") permit. The initial ATC was issued by the District shortly after the FDOC under District application #18595.

[3] ATC permits are federally enforceable pre-construction permits that reflect the requirements of the attainment area prevention of significant deterioration and nonattainment area new source review ("NSR") programs. The District's NSR requirements are described in Regulation 2, Rule 2. New power plants locating in California subject to the CEC certification requirements must also comply with Regulation 2, Rule 3, titled Power Plants. Regulation 2-3-405 requires the District to issue an ATC for a subject facility only after the CEC issues its certificate for the facility.

[4] The increased heat input allowed the facility to increase its electrical generating capacity from 520 MW to 555 MW.

[5] The District was implementing the federal PSD program under a delegation agreement with EPA dated October 28, 1997. The non-attainment NSR program was most recently SIP-approved by EPA on January 26, 1999. 64 Fed. Reg. 3850.

District on the draft Los Medanos Permit on behalf of OCE ("OCE's Comment Letter").[6] The District responded to OCE's Comment Letter by a letter dated September 4, 2001, from William de Boisblanc ("Response to Comments"). EPA Region IX did not object to the proposed permit during its 45-day review period. The Petition to Object to the Permit, filed by OCE and CARE and dated October 9, 2001, was received by Region IX on October 12, 2001. EPA calculates the period for the public to petition the Administrator to object to a permit as if the 30-day public comment and 45-day EPA review periods run sequentially, accordingly petitioners have 135 days after the issuance of a draft permit to submit a petition.[7] Given that the Petition was filed with EPA on October 12, 2001, I find that it was timely filed. I also find that the Petition is appropriately based on objections that were raised with reasonable specificity during the comment period or that arose after the public comment period expired.[8]

III. ISSUES RAISED BY THE PETITIONERS

A. District Breakdown Relief Under Permit Condition I.H.1

Petitioners' first allegation challenges the inclusion in the Los Medanos Permit of Condition I.H.1, a provision which incorporates SIP rules allowing a permitted facility to seek relief from enforcement by the District in the event of a breakdown. Petition at 3. Petitioners assert that the definition of "breakdown" at Regulation 1-208 would allow relief in situations beyond those allowed under the Clean Air Act. Specifically, Petitioners allege that the "definition of 'breakdown' in Regulation 1-208 is much broader than the federal definition of breakdown, which is provided in 40 CFR Part 70," or more precisely, at 40 CFR § 70.6(g).

Condition I.H.1 incorporates District Regulations 1-208, 1-431, 1-432, and 1-433 (collectively the "Breakdown Relief Regulations") into the Permit. Regulation 1-208 defines breakdown, and Regulations 1-431 through 1-433 describe how an applicant is to notify the District of a breakdown, how the District is to determine whether the circumstances meet the definition of a breakdown, and what sort of relief to grant the permittee. To start our analysis, it

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[6] We note that OCE submitted its comments to the District days after the close of the public comment period established pursuant to the District's Regulation 2-6-412 and 40 CFR § 70.7(h)(4). Though we are responding to the Petition despite this possible procedural flaw, we reserve our right to raise this issue in any future proceeding.

[7] This 135-day period to petition the Administrator is based on a 30-day District public notice and comment period, a 45-day EPA review period and the 60-day period for a person to file a petition to object with EPA.

[8] In its Comment Letter, OCE generally raised concerns with the draft Major Facility Review Permit that are the basis for the Petition. In regard to whether all issues were raised with 'reasonable specificity,' I find that claims one through four of the Petition were raised adequately in OCE's Comment Letter. The fifth claim, that the District did not live up to its commitment to make changes to the Permit, can be raised in the Petition since the grounds for the claim arose after the public comment period ended. See 40 CFR § 70.8(d). Finally, CARE's non-participation in the District's notice-and-comment process does not prevent the organization from filing a title V petition because the regulations allow "any person" to file a petition based on earlier objections raised during the public comment period regardless of who had filed those earlier comments. See CAA § 505(b)(2); 40 CFR § 70.8(d)

is important to understand the impact of granting relief under the Breakdown Relief Regulations. Neither Condition I.H.1, nor the SIP provisions it incorporates into the Permit, would allow for an exemption from an applicable requirement for periods of excess emissions. An "exemption from an applicable requirement" would mean that the permittee would be deemed not to be in violation of the requirement during the period of excess emissions. Rather, these Breakdown Relief Regulations allow an applicant to enter into a proceeding in front of the District that could ultimately lead to the District employing its enforcement discretion not to seek penalties for violations of an applicable requirement that occurred during breakdown periods.

Significantly, the Breakdown Relief Regulations have been approved by EPA as part of the District's federally enforceable SIP. 64 Fed. Reg. 34558 (June 28, 1999) (this is the most recent approval of the District's Regulation 1). Part 70 requires all SIP provisions that apply to a source to be included in title V permits as "applicable requirements." See In re Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants, Petition No. VIII-00-1, at 23-24 ("Pacificorp"). On this basis alone, the inclusion of the Breakdown Relief Regulations in the permit is not objectionable.[9]

Moreover, Petitioners' allegation that Condition 1.H.1 is inconsistent with 40 CFR § 70.6(g) does not provide a basis for an objection. 40 CFR § 70.6(g) allows a permitting authority to incorporate into its title V permit program an affirmative defense provision for "emergency" situations as long as the provision is consistent with the 40 CFR § 70.6(g)(3) elements. Such an emergency defense then may be incorporated into permits issued pursuant to that program. As explained above, these regulations provide relief based on the District's enforcement discretion and do not provide an affirmative defense to enforcement. Moreover, to the extent the emergency defense is incorporated into a permit, 40 CFR § 70.6(g)(5) makes clear that the Part 70 affirmative defense type of relief for emergency situations "is in addition to any emergency or upset provision contained in any applicable requirement." This language clarifies that the Part 70 regulations do not bar the inclusion of applicable SIP requirements in title V permits, even if those applicable requirements contain "emergency" or "upset" provisions such as Condition 1.H.1 that may overlap with the emergency defense provision authorized by 40 CFR § 70.6(g).

Also, a review of the Breakdown Relief Regulations themselves demonstrates that they are not inconsistent with the Clean Air Act, and therefore, not contrary to the Act. A September 28, 1982, EPA policy memorandum from Kathleen Bennet, titled Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions ("1982 Excess Emission Policy"), explains that "all periods of excess emissions [are] violations of the applicable standard." Accordingly, the 1982 Excess Emission Policy provides that EPA will not approve automatic exemptions in operating permits or SIPs. However, the 1982 Excess Emission Policy also

[9]This holds true even if the Petitioner could support an allegation that EPA had erroneously incorporated the provisions into the SIP. See Pacificorp at 23 ("even if the provision were found not to satisfy the Act, EPA could not properly object to a permit term that is derived from a provision of the federally approved SIP"). However, as explained below, EPA believes that these provisions were appropriately approved as part of the District's SIP.

explains that EPA can approve, as part of a SIP, provisions that codify an "enforcement discretion approach." The Agency further refined its position on this topic in a September 20, 1999 policy memorandum from Steven A. Herman and Robert Perciasepe, titled State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown ("1999 Excess Emission Policy").[10] The 1999 Excess Emission Policy explained that a permitting authority may express its enforcement discretion through appropriate affirmative defense provisions approved into the SIP as long as the affirmative defense applies only to civil penalties (and not injunctive relief) and meets certain criteria. As previously explained, the Breakdown Relief Regulations approved into the District's SIP provide neither an affirmative defense to an enforcement action nor an automatic exemption from applicable requirements, but rather serve as a mechanism for the District to use its enforcement discretion. Therefore, I find that the provision is not inconsistent with the Act.

Finally, Petitioners allege that the inclusion of Condition I.H.1 "creates unnecessary confusion and unwarranted potential defense to federal civil enforcement." Inclusion of Condition I.H.3 in the Los Medanos Permit clarifies Condition I.H.1 by stating that "[t]he granting by the District of breakdown relief . . . will not provide relief from federal enforcement." Contrary to Petitioners' allegation, we find that addition of this language successfully dispels any ambiguity as to the impact of the provision, especially as it relates to federal enforceability, and therefore clears up "confusion" and limits "unwarranted defenses." For the reasons stated above, I deny the Petition as it relates to Condition I.H.1 and the incorporation of the Breakdown Relief Regulations into the Permit.

B. Hearing Board Variance Relief Under Permit Condition I.H.2

The Petitioners' second allegation challenges the inclusion in the Los Medanos Permit of Condition I.H.2, which states that a "permit holder may seek relief from enforcement action for a violation of any of the terms and conditions of this permit by applying to the District's Hearing Board for a variance pursuant to Health and Safety Code Section 42350. . . ." Petition at 3. Petitioners make a number of arguments in support of their claim that the reference to California's Variance Law in the Los Medanos Permit serves as a basis for an objection; none of these allegations, however, serves as an adequate basis for EPA to object to the Permit.

Health and Safety Code ("HSC") sections 42350 et seq. ("California's Variance Law") allow a permittee to request an air district hearing board to issue a variance to allow the permittee to operate in violation of an applicable district rule, or State rule or regulation for a limited time. Section 42352(a) prohibits the issuance of a variance unless the hearing board makes specific

[10] On December 5, 2001, EPA issued a brief clarification of this policy. Re-Issuance of Clarification – State Implementation Plans (SIPs); Policy Regarding Excess Emissions During Malfunction, Startup, and Shutdown.

findings.[11] Section 42352(a)(2) limits the availability of variances to situations involving non-compliance with "any rule, regulation, or order of the district." As part of the variance process, the hearing board may set a "schedule of increments of progress," to establish milestones and final deadlines for achieving compliance. See, e.g., HSC § 42358. EPA has not approved California's Variance Law into the SIP or Title V program of any air district. See, e.g., 59 Fed. Reg. 60939 (Nov. 29, 1994) (proposing to approve BAAQMD's title V program without California's Variance Law); 60 Fed. Reg. 32606 (June 23, 1995) (granting final interim approval to BAAQMD's title V program).

Petitioners argue that the "variance relief issued by BAAQMD under state law does not qualify as emergency breakdown relief authorized by the Title V provisions . . . ." Petition at 4. As with the Breakdown Relief Regulations, Petitioners' true concern appears to be that Condition I.H.2 and California's Variance Law are inconsistent with 40 CFR § 70.6(g), which allows for the incorporation of an affirmative defense provision into a federally approved title V program, and thus into title V permits. Condition I.H.2 and California's Variance Law, however, do not need to be consistent with 40 CFR § 70.6(g) because these provisions merely express an aspect of the District's discretionary enforcement authority under State law rather than incorporate a Part 70 affirmative defense provision into the Permit.[12] As described above, the discretionary

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[11] HSC section 42352(a) provides as follows:

> No variance shall be granted unless the hearing board makes all of the following findings:
>
> (1) That the petitioner for a variance is, or will be, in violation of Section 41701 or of any rule, regulation, or order of the district.
>
> (2) That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business. In making those findings where the petitioner is a public agency, the hearing board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this paragraph, "essential public service" means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.
>
> (3) That the closing or taking would be without a corresponding benefit in reducing air contaminants.
>
> (4) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.
>
> (5) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.
>
> (6) During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the district, and report these emission levels to the district pursuant to a schedule established by the district.

[12] Government agencies have discretion to not seek penalties or injunctive relief against a noncomplying source. California's Variance Law recognizes this inherent discretion by codifying the process by which a source may seek relief through the issuance of a variance. The ultimate decision to grant a variance, however, is still wholly discretionary, as evidenced by the findings the hearing board must make in order to issue a variance. See HSC section 42352(a)(1)-(6).

nature of California's Variance Law is evidenced by the findings set forth in HSC §42538(a) that a hearing board must make before it can issue a variance.[13] Inherent within the process of making these findings is the hearing board's ability to exercise its discretion to evaluate and consider the evidence and circumstances underlying the variance application and to reject or grant, as appropriate, that application. Moreover, the District clearly states in Condition I.H.3. that the granting by the District of a variance does not "provide relief from federal enforcement," which includes enforcement by both EPA and citizens.[14] As Condition I.H.2. refers to a discretionary authority under state law that does not affect the federal enforceability of any applicable requirement, I do not find its inclusion in the Los Medanos Permit objectionable.

Petitioners also argue that the "variance program is a creature of state law," and therefore should not be included in the Los Medanos Permit. Petitioners' complaint is obviously without merit since Part 70 clearly allows for inclusion of state- and local-only requirements in title V permits as long as they are adequately identified as having only state- or local-only significance. 40 CFR § 70.6(b)(2). For this reason, I find that Petitioners' allegation does not provide a basis to object to the Los Medanos Permit.

Petitioners further argue that California's Variance Law allows a revision to the approved SIP in violation of the Act. Petitioners misunderstand the provision. The SIP is comprised of the State or district rules and regulations approved by EPA as meeting CAA requirements. SIP requirements cannot be modified by an action of the State or District granting a temporary variance. EPA has long held the view that a variance does not change the underlying SIP requirements unless and until it is submitted to and approved by EPA for incorporation into the SIP. For example, since 1976, EPA's regulations have specifically stated: "In order for a variance to be considered for approval as a revision to the State implementation plan, the State must submit it in accordance with the requirements of this section." 40 CFR §51.104(d); 41 Fed. Reg. 18510, 18511 (May 5, 1976).

The fact that the California Variance Law does not allow a revision to the approved SIP is further evidenced by the law itself. By its very terms, California's Variance Law is limited in application to "any rule, regulation, or order of the district," HSC § 42352(a)(2) (emphasis supplied); therefore, the law clearly does not purport to modify the federally approved SIP. In addition, California's view of the law's effect is consistent with EPA's. For instance, guidance

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[13] Because of its discretionary nature, California's Variance Law does not impose a legal impediment to the District's ability to enforce its SIP or title V program. EPA cannot prohibit the District's use of the variance process as a means for sources to avoid enforcement of permit conditions by the District unless the misuse of the variance process results in the District's failure to adequately implement or enforce its title V program, or its other federally delegated or approved CAA programs. Petitioners have made no such allegation.

[14] Other BAAQMD information resources on variances also clearly set forth the legal significance of variances. For example, the application for a variance on BAAQMD's website states that EPA "does not recognize California's variance process" and that "EPA can independently pursue legal action based on federal law against the facility continuing to be in violation."

issued in 1989 by the California Air Resources Board ("CARB"), the State agency responsible for preparation of California's SIP, titled Variances and Other Hearing Board Orders as SIP Revisions or Delayed Compliance Orders Under Federal Law, demonstrates that the State's position with respect to the federal enforceability and legal consequences of variances is consistent with EPA's. For example, the guidance states:

> State law authorizes hearing boards of air pollution control districts to issue variances from district rules in appropriate instances. These variances insulate sources from the imposed state law. However, where the rule in question is part of the State Implementation Plan (SIP) as approved by the U.S. Environmental Protection Agency (EPA), the variance does not by itself insulate the source from penalties in actions brought by EPA to enforce the rule as part of the SIP. While EPA can use enforcement discretion to informally insulate sources from federal action, formal relief can only come through EPA approval of the local variance.

In 1993, the California Attorney General affirmed this position in a formal legal opinion submitted to EPA as part of the title V program approval process, stating that "any variance obtained by the source does not effect [sic] or modify permit terms or conditions . . . nor does it preclude federal enforcement of permanent terms and conditions." In sum, both the federal and State governments have long held the view that the issuance of a variance by a district hearing board does not modify the SIP in any way. For this reason, I find that Petitioners' allegation does not provide a basis to object to the Los Medanos Permit.

Finally, Petitioners raise concerns that the issuance of variances could "jeopardize attainment and maintenance of ambient air quality standards" and that inclusion of the variance provision in the Permit is highly confusing to the regulated community and public. As to the first concern, Petitioners' allegation is too speculative to provide a basis for an objection to a title V permit. Moreover, as previously stated, permittees that receive a variance remain subject to all SIP and federal requirements, as well as federal enforcement for violation of those requirements. As to Petitioners' final point, I find that including California's Variance Law in title V permits may actually help clarify the regulatory scheme to the regulated community and the public. California's Variance Law can be utilized by permittees seeking relief from District or State rules regardless of whether the Variance Law is referenced in title V permits; therefore, reference to the Variance Law with appropriate explanatory language as to its limited impact on federal enforceability helps clarify the actual nature of the law to the regulated community. In short, since title V permits are meant to contain all applicable federal, State, and local requirements, with appropriate clarifying language explaining the function and applicability of each requirement, the District may incorporate California's Variance Law into the Los Medanos Permit and other title V permits. For reasons stated in this Section, I do not find grounds to object to the Los Medanos Permit on this issue.

C. Statement of Basis

Petitioners' third claim is that the Los Medanos Permit lacks a statement of basis, as required by 40 CFR § 70.7(a)(5). Petition at 5. Petitioners assert that without a statement of basis it is virtually impossible for the public to evaluate the periodic monitoring requirements (or lack thereof). Id. They specifically identify the District's failure to include an explanation for its decision not to require certain monitoring, including the lack of any monitoring for opacity, filterable particulate, or PM limits. Petition at 6-7, n.2. Additionally, Petitioners contend that BAAQMD fails to include any SO_2 monitoring for source S-2 (Heat Recovery Steam Generator). Id.

Section 70.7(a)(5) of EPA's permit regulations states that "the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." The statement of basis is not part of the permit itself. It is a separate document which is to be sent to EPA and to interested persons upon request.[15] Id.

A statement of basis ought to contain a brief description of the origin or basis for each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from a straight recitation of requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring that is required under 40 C.F.R. 70.6(a)(3)(i)(B) or District Regulation 2-6-503. Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and EPA a record of the applicability and technical issues surrounding the issuance of the permit.[16] See e.g., In Re Port

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[15]Unlike permits, statements of basis are not enforceable, do not set limits and do not create obligations.

[16]EPA has provided guidance on the content of an adequate statement of basis in a letter dated December 20, 2001, from Region V to the State of Ohio and in a Notice of Deficiency ("NOD") issued to the State of Texas. <http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/sbguide.pdf> (Region V letter to Ohio); 67 Fed. Reg. 732 (January 7, 2002) (EPA NOD issued to Texas). These documents describe the following five key elements of a statement of basis: (1) a description of the facility; (2) a discussion of any operational flexibility that will be utilized at the facility; (3) the basis for applying the permit shield; (4) any federal regulatory applicability determinations; and (5) the rationale for the monitoring methods selected. Id. at 735. In addition, the Region V letter further recommends the inclusion of the following topical discussions in a statement of basis: (1) monitoring and operational restrictions requirements; (2) applicability and exemptions; (3) explanation of any conditions from previously issued permits that are not being transferred to the title V permit; (4) streamlining requirements; and (5) certain other factual information as necessary. In a letter dated February 19, 1999 to Mr. David Dixon, Chair of the CAPCOA Title V Subcommittee, the EPA Region IX Air Division provided guidance to California permitting authorities that should be considered when developing a statement of basis for purposes of EPA Region IX's review. This guidance is consistent with the other guidance cited above. Each of the various guidance documents, including the Texas NOD and the Region V and IX letters, provide generalized recommendations for developing an adequate statement of basis rather than "hard and fast" rules on what to include in any given statement of basis. Taken as a whole, these recommendations provide a good road map as to what should be included in a statement of basis considering, for example, the technical complexity of the permit, the history of the facility, and any new provisions, such as periodic monitoring conditions, that the permitting authority has drafted in conjunction with issuing the title

Hudson Operation Georgia Pacific, Petition No. 6-03-01, at pages 37-40 (May 9, 2003) ("Georgia Pacific"); In Re Doe Run Company Buick Mill and Mine, Petition No. VII-1999-001, at pages 24-25 (July 31, 2002) ("Doe Run"). Finally, in responding to a petition filed in regard to the Fort James Camas Mill title V permit, EPA interpreted 40 CFR § 70.7(a)(5) to require that the rationale for selected monitoring method be documented in the permit record. See In Re Fort James Camas Mill, Petition No. X-1999-1, at page 8 (December 22, 2000) ("Ft. James").

EPA's regulations state that the permitting authority must provide EPA with a statement of basis. 40 CFR § 70.7(a)(5). The failure of a permitting authority to meet this procedural requirement, however, does not necessarily demonstrate that the title V permit is substantively flawed. In reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, EPA considers whether the petitioner has demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. See CAA § 505(b)(2) (objection required "if the petitioner demonstrates . . . that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]"); see also, 40 CFR § 70.8(c)(1). Thus, where the record as a whole supports the terms and conditions of the permit, flaws in the statement of basis generally will not result in an objection. See e.g., Doe Run at 24-25. In contrast, where flaws in the statement of basis resulted in, or may have resulted in, deficiencies in the title V permit, EPA will object to the issuance of the permit. See e.g., Ft. James at 8; Georgia Pacific at 37-40.

In this case, as discussed below, the permitting authority's failure to adequately explain its permitting decisions either in the statement of basis or elsewhere in the permit record is such a serious flaw that the adequacy of the permit itself is in question. By reopening the permit, the permitting authority is ensuring compliance with the fundamental title V procedural requirements of adequate public notice and comment required by sections 502(b)(6) and 503(e) of the Clean Air Act and 40 CFR § 70.7(h), as well as ensuring that the rationale for the selected monitoring method, or lack of monitoring, is clearly explained and documented in the permit record. See 40 CFR §§ 70.7(a)(5) and 70.8(c); Ft. James at 8.

For the proposed Los Medanos Permit, the District did not provide EPA with a separate statement of basis document. In a meeting with EPA representatives held on October 31, 2001, at the Region 9 offices, the District claimed that it complied with the statement of basis requirements for the Los Medanos Permit because it incorporated all of the necessary explanatory information either directly into the Permit or it included such information in other supporting documentation.[17] As such, the District argues, at a minimum, it complied with the substantive requirements of a statement of basis.

V permit.

[17] This meeting along with the others held with the District were for fact-gathering purposes only. In a November 8, 2001 meeting at the Region 9 offices, the Petitioners were likewise provided the opportunity to present facts pertaining to the Petition to EPA representatives.

In responding to the Petition, we reviewed the final Los Medanos Permit and all supporting documentation, which included the proposed Permit, the FDOC drafted by the District for purposes of licensing the power plant with the CEC, and the "Permit Evaluation and Emission Calculations" ("Permit Evaluation") which was developed in March 2001 as part of the modification to the previously issued ATC permit. Although the District provided some explanation in this supporting documentation as to the factual and legal basis for certain terms and conditions of the Permit, this documentation did not sufficiently set forth the basis or rationale for many other terms and conditions. Generally speaking, the District's record for the Permit does not adequately support: (1) the factual basis for certain standard title V conditions; (2) applicability determinations for source-specific applicable requirements, such as the Acid Rain requirements and New Source Performance Standards ("NSPS"); (3) exclusion of certain NSR and PSD conditions contained in underlying ATC permits; (4) recordkeeping decisions and periodic monitoring decisions under 70.6(a)(3)(i)(B) and District Regulation 2-6-503; and (5) streamlining analyses, including a discussion of permit shields.

EPA Region 9 identified numerous specific deficiencies falling under each of these broad categories.[18] For example, the District's permit record does not adequately support the basis for certain source-specific applicable requirements identified in Section IV of the Permit, especially those regarding the applicability or non-applicability of subsections rules that apply to particular types of units such the as NSPS for combustion turbines or SIP-approved District Regulations. For instance, in table IV-B and D of the Permit, the District indicates that subsection 303 of District Regulation 9-3, which sets forth NOx emission limitations, applies to certain emission units. However, the permit record fails to describe why subsection 601 of the same District Regulation, an otherwise seemingly applicable provision, is not included in the tables as an applicable requirement. Subsection 601 establishes how exhaust gases should be sampled and analyzed to determine NOx concentrations for purposes of compliance with subsection 303. Similarly, in the same tables, the District lists certain applicable NSPS subsections, such as those in 40 CFR Part 60 Subparts Da and GG, but does not explain why these subsections apply to those specific emission units nor why other seemingly applicable subsections of the same NSPS regulations do not apply to those units.[19]

The permit record also fails to explain the District's streamlining decisions of certain

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[18] EPA Region 9 Permits Office described these areas of concern in greater detail in a memorandum dated March 29, 2002, "Region 9 Review of Statement of Basis for Los Medanos title V Permit in Response to Petition to Object." This memorandum is part of the administrative record for this Order and was reviewed in responding to this Petition.

[19] The tables in Section IV pertaining to certain gas turbines located at the Facility cite to 40 CFR 60.332(a)(1) as an applicable requirement. However, these same tables fail to cite to subsections 40 CFR 60.332(a)(2) through 60.332(l) of the same NSPS program even though these provisions also apply to gas turbines. The District's failure to provide any sort of discussion or explanation as to the applicability or non-applicability of the subsections of 40 CFR 60.332 makes it impossible to review the District's applicability determinations for this NSPS.

underlying ATC permit conditions as set forth in Section VI of the Permit. The District apparently modified or streamlined the ATC conditions in the context of the title V permitting process but failed to provide an explanation in the permit record as to the basis for the change to the conditions. For instance, Condition 53 of Section VI states that the condition was "[d]eleted [on] August, 2001," but the District fails to discuss or explain anywhere in the permit record the basis for this deletion or the nature of the original condition that was deleted.

As a final example of the District's failure to provide a basis or rationale for permit terms, in accordance with Petitioner's claim, the permit record is devoid of discussion pertaining to how or why the selected monitoring is sufficient to assure compliance with the applicable requirements. See 69 Fed. Reg. 3202, 3207 (Jan. 22, 2004). Most importantly, for those applicable requirements which do not otherwise have monitoring requirements, the Permit fails to require monitoring pursuant to 40 C.F.R. 70.6(a)(3)(i)(B), and the permit record fails to discuss or explain why no monitoring should be required under this provision. As evidenced by these specific examples, I find the District did not provide an adequate analysis or discussion of the terms and conditions of the proposed Los Medanos Permit.

To conclude, by failing to draft a separate statement of basis document and by failing to include appropriate discussion in the Permit or other supporting documentation, the District has failed to provide an adequate explanation or rationale for many significant elements of the Permit. As such, I find that the Petitioners' claim in regard to this issue is well founded, and by this Order, I am requiring the District to reopen the Los Medanos Permit, and make available to the public an adequate statement of basis that provides the public and EPA an opportunity to comment on the title V permit and its terms and conditions as to the issues identified above.

D. Inadequate Permit Conditions

Petitioners' fourth claim is that Condition 22 in the Los Medanos Permit is unenforceable. The Petitioners claim that this condition "appears to defer the development of a number of permit conditions related to transient, non-steady state conditions to a time after approval of the Title V permit." Petition at 7. The Petitioners recommend that "a reasonable set of conditions should be defined" and amended through the permit modification process to conform to new data in the future. I disagree with the Petitioners on this issue.

As Petitioners correctly note, Part 70 and the Act require that "conditions in a Title V permit. . . be enforceable." However, they argue that "Condition 22 is presently unenforceable and must be deleted from the permit." I find that the condition challenged by the Petitioners is enforceable.

Conditions 21 and 22 establish NOx emissions levels for units P-1 and P-2, including limits for transient, non-steady state conditions. Condition 22(f) requires the permittee to gather data and draft and submit an operation and maintenance plan to control transient, non-steady

state emissions for units P-1 and P-2[20] within 15 months of issuance of the permit. Condition 22(g) creates a process for the District, after consideration of continuous monitoring and source test data, to fine-tune on a semi-annual basis the NO_X emission limit for units P-1 and P-2 during transient, non-steady state conditions and to modify data collection and recordkeeping requirements for the permittee.

These requirements are enforceable. EPA and the District can enforce both Condition 22(f)'s requirement to draft and submit an operation and maintenance plan for agency approval and the control measures adopted under the plan after approval. For Condition 22(g), the process for the District to modify emission limits and/or data collection and recordkeeping requirements is clearly set forth in the Permit and the modified terms will be federally enforceable. Moreover, the circumstances that trigger application of Condition 22 are specifically defined since Condition 22(c) precisely defines "transient, non-steady state condition" as when "one or more equipment design features is unable to support rapid changes in operation and respond to and adjust all operating parameters required to maintain the steady-state NO_X emission limit specified in Condition 21(b)." As such, I find that Condition 22 is federally and practically enforceable. Therefore, Petitioners' claim on this count is not supported by the plain language of the Permit itself.

Moreover, to the extent that Petitioners are concerned that Lowest Achievable Emission Rate ("LAER")[21] emission standards are being set through a process that does not incorporate appropriate NSR, PSD, and title V public notice and comment processes, such concerns are not well-founded. By its very terms, the Permit prohibits relaxation of the LAER emissions standards set in the permitting process. Condition 21(b) of the Permit sets a LAER-level emission standard of 2.5 ppmv NOx, averaged over any 1-hour period, for units P-1 and P-2 for all operational conditions other than transient, non-steady state conditions. Condition 22(a) sets the limit for transient, non-steady state conditions of 2.5 ppmv NOx, averaged over any rolling 3-hour period.[22] Implementation of Condition 22 cannot relax the LAER-level emission limits. Condition 22(f) merely requires further data-collecting, planning, and implementation of control

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[20]Unit P-1 is defined as "the combined exhaust point for the S-1 Gas Turbine and the S-2 HRSG after control by the A-1 SCR System and A-2 Oxidation Catalyst" and unit P-2 is defined as "the combined exhaust point for the S-3 Gas Turbine and the S-4 HRSG after control by the A-3 SCR System and A-4 Oxidation Catalyst." Permit, Condition 21(a).

[21]LAER is the level of emission control required for all new and modified major sources subject to the NSR requirements of Section 173, Part D, of the CAA for non-attainment areas. 42 U.S.C. § 7501-15. Since the Bay Area is non-attainment for ozone, the Facility must meet LAER-level emission controls for NO_x emission since NO_x is a pre-cursor of ozone. California uses different terminology than the CAA when applying LAER, however. In California, best available control technology ("BACT") is consistent with LAER-level controls, and California and its local permitting authorities use this terminology when issuing permits.

[22]The District determined this limit to be LAER for transient, non-steady state conditions because, as the District stated in its Response to Comments, "the NOx emission limit (2.5 ppmv averaged over one hour) during load changes . . . . ha[s] not yet been achieved in practice by any utility-scale power plant."

measures for transient, non-steady state emissions that go beyond those already established to comply with LAER requirements. While Condition 22(g) does allow the District to modify the emission limit during transient, non-steady state conditions,[23] this new limit cannot exceed the "backstop" LAER-level limit set by Condition 22(a). As such, Condition 22(g) serves to only make overall emission limits more stringent. The District itself recognized the "no backsliding" nature of Conditions 22(f) and (g) on page 3 of its Response to Comments where it stated that the Facility "must comply with 'backstop' NO_X emission limit of 2.5 ppmv, averaged over 3 hours, under all circumstances and comply with all hourly, daily and annual mass NO_X emission limits."[24]

Finally, for any control measures; further data collection, recordkeeping or monitoring requirements; new definitions; or emission limits established pursuant to Conditions 22(f) or (g) that are to be incorporated into the permit, the District must utilize the appropriate title V permit modification procedures set forth in 40 CFR § 70.7(d) and the District's Regulation 2-6-415 to modify the Permit. The District itself recognizes this in Condition 22(g) by stating that "the Title V operating permit shall be amended as necessary to reflect the data collection and recordkeeping requirements established under 22(g)(ii)." For the reasons described above, we do not find Conditions 22(f) and (g) unenforceable or otherwise objectionable for inclusion in the Los Medanos Permit.

E. Failure to Incorporate Agreed-to Changes

The final claim by the Petitioners is that the District agreed to incorporate certain changes into the final Los Medanos Permit but failed to do so. Namely, Petitioners claim that the District failed to keep its commitments to OCE to add language requiring recordkeeping for stipulated abatement strategies under SIP-approved Regulation 4 and to add clarifying language about NO_X monitoring requirements. The District appeared to make these commitments in its Response to Comment Letter. These allegations do not provide a basis for objecting to the Permit because neither change is necessary to ensure that the District is properly including all applicable requirements in the permit nor are they necessary to assure compliance with the underlying applicable requirements. CAA § 504(a); 40 CFR § 70.6(a)(3).

The first change sought by OCE during the comment period was a requirement that the

[23]The District may modify the emission limit during transient, non-steady state conditions every 6 months for the first 24 months after the start of the Commissioning period. The Commissioning period commences "when all mechanical, electrical, and control systems are installed and individual system start-up has been completed, or when a gas turbine is first fired, whichever comes first. . . ." The Commissioning period terminates "when the plant has completed performance testing, is available for commercial operation, and has initiated sales to the power exchange." Permit, at page 34.

[24]The purpose of Condition 22, as stated by the District, is to allow for limited "excursions above the emission limit that could potentially occur under unforeseen circumstances beyond [the Facility's] control." This is the rationale for the three hour averaging period for transient, non-steady state conditions rather than the one hour averaging period of Condition 21(b) for all other periods.

Facility document response actions taken during periods of heightened air pollution. The District's Regulation 4 establishes control and advisory procedures for large air emission sources when specified levels of ambient air contamination have been reached and prescribes certain abatement actions to be implemented by each air source when action alert levels of air pollution are reached. OCE recommended that the District require recordkeeping in the title V permit to "insure that the stipulated abatement strategies [of Regulation 4] are implemented during air pollution events," and the District appeared to agree to such a recommendation in its Response to Comments. Although the recordkeeping suggested by Petitioners would be helpful, Petitioners have not shown that it is required by title V, the SIP, or any federal regulation, and therefore, this failure to include it is not a basis for objecting to the permit.

The Part 70 regulations set the minimum standard for inclusion of monitoring and recordkeeping requirements in title V permits. See 40 CFR § 70.6(a)(3). These provisions require that each permit contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit" where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring). 40 CFR § 70.6(a)(3)(i)(B). There may be limited cases in which the establishment of a regular program of monitoring and/or recordkeeping would not significantly enhance the ability of the permit to reasonably assure compliance with the applicable requirement and where the status quo (i.e., no monitoring or recordkeeping) could meet the requirements of 40 CFR § 70.6(a)(3). Such is the case here.

Air pollution alert events occur infrequently, and therefore, compliance with Regulation 4 is a minimal part of the source's overall compliance with SIP requirements. More importantly, Regulation 4-303 abatement requirements mostly impose a ban on direct burning or incineration during air pollution alert events, activities which are unlikely to occur at a gas-fired power plant such as the Facility and in any case are easy to monitor by District inspectors. The other Regulation 4-303 requirements are mostly voluntary actions to be taken by the sources, such as reduction in use of motor vehicles, and therefore do not require compliance monitoring or recordkeeping to assure compliance. Since the activities regulated by Regulation 4 are unlikely to occur at the Facility, and compliance is easily verified by District inspectors, recordkeeping is not necessary to assure compliance with Regulation 4. Therefore, further recordkeeping requirements sought by the Petitioners are not required by 40 CFR § 70.6(a)(3).

The second change sought by the Petitioners is to add language to Condition 36 clarifying why certain pollutants, such as NO_X emissions, are exempt from mass emission calculations. On page 3 of the District's Response to Comments, the District explained that the NO_X emissions are exempt from the mass emission calculations because they are measured directly through CEMS monitoring, whereas the other pollutant emissions subject to the calculations do not have equivalent CEMS monitoring. Though this clarification is helpful, it does not need to be incorporated into the title V permit itself. Therefore, its non-inclusion in the Permit does not provide a basis for an EPA objection to the Permit. To the extent that such

clarifying language is important, it should be included in the statement of basis, however. Since the District will be drafting a statement of basis for the Los Medanos Permit due to the partial granting of the Petition, we recommend that the clarifying language for Condition 36 be included in the newly drafted statement of basis.

Though we hope that permitting authorities would generally fulfill commitments made to the public, we find that the Petitioners' fifth claim does not provide a basis for an objection to the Los Medanos Permit for the reasons described above. The mere fact that the District committed to make certain changes, yet did not follow through on those commitments, does not provide a basis for an objection to a title V permit. Petitioners have provided no other reason why the agreed upon changes must be made to the permit beyond the District's commitments. I accordingly deny Petitioners' request to veto the permit on these grounds.

IV. CONCLUSION

For the reasons set forth above and pursuant to Section 505(b)(2) of the Clean Air Act, I am granting the Petitioners' request that the Administrator object to the issuance of the Los Medanos Permit with respect to the statement of basis issue and am denying the Petition with respect to the other allegations.

May 24, 2004
Date

_____/S/_____
Michael O. Leavitt
Administrator

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of Valero Refining Co Benicia, California Facility	Petition No. IX-2004-07
Major Facility Review Permit Facility No. B2626 Issued by the Bay Area Air Quality Management District	ORDER RESPONDING TO PETITIONER'S REQUEST THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF A STATE OPERATING PERMIT

ORDER DENYING IN PART AND GRANTING IN PART A PETITION FOR OBJECTION TO PERMIT

On December 7, 2004, the Environmental Protection Agency ("EPA") received a petition ("Petition") from Our Children's Earth Foundation ("OCE" or "Petitioner") requesting that the EPA Administrator object to the issuance of a state operating permit from the Bay Area Air Quality Management District ("BAAQMD" or "District") to Valero Refining Co. to operate its petroleum refinery located in Benicia, California ("Permit"), pursuant to title V of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7661-7661f, CAA §§ 501-507, EPA's implementing regulations in 40 C.F.R. Part 70 ("Part 70"), and the District's approved Part 70 program. *See* 66 Fed. Reg. 63503 (Dec. 7, 2001).

Petitioner requested EPA object to the Permit on several grounds. In particular, Petitioner alleged that the Permit failed to properly require compliance with applicable requirements pertaining to, *inter alia*, flares, cooling towers, process units, electrostatic precipitators, and other waste streams and units. Petitioner identified several alleged flaws in the Permit application and issuance, including a deficient Statement of Basis. Finally, Petitioners alleged that the permit impermissibly lacked a compliance schedule and failed to include monitoring for several applicable requirements.

EPA has now fully reviewed the Petitioner's allegations pursuant to the standard set forth in section 505(b)(2) of the Act, which places the burden on the petitioner to "demonstrate[] to the Administrator that the permit is not in compliance" with the applicable requirements of the Act or the requirements of part 70, *see also* 40 C.F.R. § 70.8(c)(1), and I hereby respond to them by this Order. In considering the allegations, EPA reviewed the Permit and related materials and information provided by the Petitioner in the Petition.[1] Based on this review, I partially deny and

[1]On March 7, 2005 EPA received a lengthy (over 250 pages, including appendices), detailed submission from Valero Refining Company regarding this Petition. Due to the fact that Valero Refining Company made its submission very shortly before EPA's settlement agreement deadline for responding to the Petition and the size of the

partially grant the Petitioner's request that I object to issuance of the Permit for the reasons described below.

I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. In 1995, EPA granted interim approval to the title V operating permit program submitted by BAAQMD. 60 Fed. Reg. 32606 (June 23, 1995); 40 C.F.R. Part 70, Appendix A. Effective November 30, 2001, EPA granted full approval to BAAQMD's title V operating permit program. 66 Fed. Reg. 63503 (Dec. 7, 2001.).

Major stationary sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes applicable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. *See* CAA §§ 502(a) and 504(a). The title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as "applicable requirements"), but does require permits to contain monitoring, recordkeeping, reporting, and other compliance requirements when not adequately required by existing applicable requirements to assure compliance by sources with existing applicable emission control requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, EPA, permitting authorities, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements. Thus, the title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under section 505(a) of the Act and 40 C.F.R. § 70.8(a), permitting authorities are required to submit all operating permits proposed pursuant to title V to EPA for review. If EPA determines that a permit is not in compliance with applicable requirements or the requirements of 40 C.F.R. Part 70, EPA will object to the permit. If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act and 40 C.F.R. § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. Section 505(b)(2) of the Act requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of Part 70 and the applicable implementation plan. *See*, 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003). Part 70 requires that a petition must be "based only on objections to the

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submission, EPA was not able to review the submission itself, nor was it able to provide the Petitioner an opportunity to respond to the submission. Although the Agency previously has considered submissions from permittees in some instances where EPA was able to fully review the submission and provide the petitioners with a chance to review and respond to the submissions, time did not allow for either condition here. Therefore, EPA did not consider Valero Refining Company's submission when responding to the Petition via this Order.

permit that were raised with reasonable specificity during the public comment period. . ., unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period." 40 C.F.R. § 70.8(d). A petition for objection does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period and before receipt of an objection. If EPA objects to a permit in response to a petition and the permit has been issued, the permitting authority or EPA will modify, terminate, or revoke and reissue such a permit using the procedures in 40 C.F.R. §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

II. PROCEDURAL BACKGROUND

A. Permitting Chronology

BAAQMD held its first public comment period for the Valero permit, as well as BAAQMD's other title V refinery permits from June through September 2002.[2] BAAQMD held a public hearing regarding the refinery permits on July 29, 2002. From August 5 to September 22, 2003, BAAQMD held a second public comment period for the permits. EPA's 45-day review of BAAQMD's initial proposed permits ran concurrently with this second public comment period, from August 13 to September 26, 2003. EPA did not object to any of the proposed permits under CAA section 505(b)(1). The deadline for submitting CAA section 505(b)(2) petitions was November 25, 2003. EPA received petitions regarding the Valero Permit from Valero Refining Company and from Our Children's Earth Foundation. EPA also received section 505(b)(2) petitions regarding three of BAAQMD's other refinery permits.

On December 1, 2003, BAAQMD issued its initial title V permits for the Bay Area refineries, including the Valero facility. On December 12, 2003, EPA informed the District of EPA's finding that cause existed to reopen the refinery permits because the District had not submitted proposed permits to EPA as required by title V, Part 70 and BAAQMD's approved title V program. *See* Letter from Deborah Jordan, Director, Air Division, EPA Region 9 to Jack Broadbent, Air Pollution Control Officer, Bay Area Air Quality Management District, dated December 12, 2003. EPA's finding was based on the fact that the District had substantially revised the permits in response to public comments without re-submitting proposed permits to EPA for another 45-day review. As a result of the reopening, EPA required BAAQMD to submit to EPA new proposed permits allowing EPA an additional 45-day review period and an opportunity to object to a permit if it failed to meet the standards set forth in section 505(b)(1).

On December 19, 2003, EPA dismissed all of the section 505(b)(2) petitions seeking objections to the refinery permits as unripe because of the just-initiated reopening process. *See e.g.,* Letters from Deborah Jordan, Director, Air Division, EPA Region 9, to John T. Hansen,

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[2]There are a total of five petroleum refineries in the Bay Area: Chevron Products Company's Richmond refinery, ConocoPhillips Company's San Francisco Refinery in Rodeo, Shell Oil Company's Martinez Refinery, Tesoro Refining and Marketing Company's Martinez refinery, and Valero Refining Company's Benicia facility.

Pillsbury Winthrop, LLP (representing Valero) and to Marcelin E. Keever, Environmental Law and Justice Clinic, Golden Gate University School of Law (representing Our Children's Earth Foundation and other groups) dated December 19, 2003. EPA also stated that the reopening process would allow the public an opportunity to submit new section 505(b)(2) petitions after the reopening was completed. In February 2004, three groups filed challenges in the United States Court of Appeals for the Ninth Circuit regarding EPA's dismissal of their section 505(b)(2) petitions. The parties resolved this litigation by a settlement agreement under which EPA agreed to respond to new petitions (i.e., those submitted after EPA's receipt of BAAQMD's re-proposed permits, such as this Petition) from the litigants by March 15, 2005. *See* 69 Fed. Reg. 46536 (Aug. 3, 2004).

BAAQMD submitted a new proposed permit for Valero to EPA on August 26, 2004; EPA's 45-day review period ended on October 10, 2004. EPA objected to the Valero Permit under CAA section 505(b)(1) on one issue: the District's failure to require adequate monitoring, or a design review, of thermal oxidizers subject to EPA's New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.

B. Timeliness of Petition

The deadline for filing section 505(b)(2) petitions expired on December 9, 2004. EPA finds that the Petition was submitted on December 7, 2004, which is within the 60-day time frame established by the Act and Part 70. EPA therefore finds that the Petition is timely.

III. ISSUES RAISED BY PETITIONER

A. Compliance with Applicable Requirements

Petitioner alleges that EPA must object to the Permit on the basis of alleged deficiencies Petitioner claims EPA identified in correspondence with the District dated July 28, August 2, and October 8, 2004. Petitioner alleges that EPA and BAAQMD engaged in a procedure that allowed issuance of a deficient Permit. Petition at 6-10. EPA disagrees with Petitioner that it was required to object to the Permit under section 505(b)(1) or that it followed an inappropriate procedure during its 45-day review period.

As a threshold matter, EPA notes that Petitioner's claims addressed in this section are limited to a mere paraphrasing of comments EPA provided to the District in the above-referenced correspondence. Petitioner did not include in the Petition any additional facts or legal analysis to support its claims that EPA should object to the Permit. Section 505(b)(2) of the Act places the burden on the petitioner to "demonstrate[] to the Administrator that the permit is not in compliance" with the applicable requirements of the Act or the requirements of part 70. *See also* 40 C.F.R. § 70.8(c)(1); *NYPIRG*, 321 F.3d at 333 n.11. Furthermore, in reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, EPA considers whether the petitioner has

demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. *See* CAA § 505(b)(2); *see also* 40 C.F.R. § 70.8(c)(1); *In the Matter of Los Medanos Energy Center*, at 11 (May 24, 2004) ("*Los Medanos*"); *In the Matter of Doe Run Company Buick Mill and Mine*, Petition No. VII-1999-001, at 24-25 (July 31, 2002) ("*Doe Run*"). Petitioner bears the burden of demonstrating a deficiency in the permit whether the alleged flaw was first identified by Petitioner or by EPA. *See* 42 U.S.C. § 7661d(b)(2). Because this section of the Petition is little more than a summary of EPA's comments on the Permit, with no additional information or analysis, it does not demonstrate that there is a deficiency in the Permit.

1. EPA's July 28 and August 2, 2004 Correspondence

Petitioner overstates the legal significance of EPA's correspondence to the District dated July 28 and August 2, 2004. This correspondence, which took place between EPA and the District during the permitting process but before BAAQMD submitted the proposed Permit to EPA for review, was clearly identified as "issues for discussion" and did not have any formal or legal effect. Nonetheless, EPA is addressing the substantive aspects of Petitioner's allegation regarding the applicability and enforceability of provisions relating to 40 C.F.R. § 60.104(a)(1) in Section III.G.1.

2. Attachment 2 of EPA's October 8, 2004 Letter

EPA's letter to the District dated October 8, 2004 contained the Agency's formal position with respect to the proposed Permit. *See* Letter from Deborah Jordan, Director, Air Division, EPA Region 9 to Jack Broadbent, Air Pollution Control Officer, BAAQMD, dated October 8, 2004 ("EPA October 8, 2004 Letter"). Attachment 2 of the letter requested the District to review whether the following regulations and requirements were appropriately handled in the Permit:

- Applicability of 40 C.F.R. Part 63, Subpart CC to flares
  Applicability of Regulation 8-2 to cooling towers
- Applicability of NSPS Subpart QQQ to new process units
  Applicability of NESHAP Subpart FF to benzene waste streams according to annual average water content
  Compliance with NESHAP Subpart FF for benzene waste streams
- Parametric monitoring for electrostatic precipitators

EPA and the District agreed that this review would be completed by February 15, 2005 and that the District would solicit public comment for any necessary changes by April 15, 2005. Contrary to Petitioner's allegation, EPA's approach to addressing these uncertainties was appropriate. The Agency pressed the District to re-analyze these issues and obtained the District's agreement to follow a schedule to bring these issues to closure. EPA notes again that the Petition itself provides no additional factual or legal analysis that would resolve these applicability issues and demonstrate that the Permit is indeed lacking an applicable requirement.

Progress in resolving these issues is attributable solely to the mechanism set in place by EPA and the District.

EPA has received the results of BAAQMD's review, *see,* Letter from Jack Broadbent, Air Pollution Control Officer, BAAQMD, to Deborah Jordan, Director, Air Division, EPA Region 9, dated February 15, 2005 ("BAAQMD February 15, 2005 Letter"), and is making the following findings.

a. Applicability of 40 C.F.R. Part 63, Subpart CC to Flares

This issue is addressed in Section III.H.

b Cooling Tower Monitoring

This issue is addressed at Section III.G.3.

Applicability of NSPS Subpart QQQ to New Process Units

Petitioner claims EPA determined that the Statement of Basis failed to discuss the applicability of NSPS Subpart QQQ for two new process units at the facility.

In an applicability determination for Valero's sewer collection system (S-161), the District made a general reference to two new process units that had been constructed since 1987, the date after which constructed, modified, or reconstructed sources became subject to New Source Performance Standard ("NSPS") Subpart QQQ. The District further indicated that process wastewater from these units is hard-piped to an enclosed system. However, the District did not discuss the applicability of Subpart QQQ for these units or the associated piping. As a result, it was not clear whether applicable requirements were omitted from the proposed Permit.

In response to EPA's request for more information on this matter, the District stated in a letter dated February 15, 2005[3] that the process units are each served by separate storm water and sewer systems. The District has concluded that the storm water system is exempt from Subpart QQQ pursuant to 40 C.F.R. 60.692-1(d)(1). However, with regard to the sewer system, the District stated the following:

> The second sewer system is the process drain system that contains oily water waste streams. This system is "hard-piped" to the slop oil system where the wastewater is separated and sent to the sour water stripper. From the sour water stripper, the wastewater [is] sent directly to secondary treatment in the WWTP where it is processed in the Biox units.

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[3]*See* Letter from Jack Broadbent, Executive Office/APCO, Bay Area Air Quality Management District to Deborah Jordan, Director, Air Division, EPA Region 9.

The District will review the details of the new process drain system and determine the applicable standards. A preliminary review indicates that, since this system is hard-piped with no emissions, the new process drain system may have been included in the slop oil system, specifically S-81 and/or S104. If this is the case, Table IV-J33 will be reviewed and updated, as necessary, to include the requirements of the new process drain system.

The District's response indicates that the Permit may be deficient because it may lack applicable requirements. Therefore, EPA is granting Petitioner's request to object to the Permit. The District must determine what requirements apply to the new process drain system and add any applicable requirements to the Permit as appropriate.

d. Management of Non-aqueous Benzene Waste Streams Pursuant to 40 C.F.R. Part 61, Subpart FF

Petitioner claims that EPA identified an incorrect applicability determination regarding benzene waste streams and NESHAP Subpart FF. Referencing previous EPA comments, Petitioner notes that the restriction contained in 40 C.F.R. § 61.342(e)(1) was ignored by the District in the applicability determination it conducted for the facility.

The Statement of Basis for the proposed Permit included an applicability determination for Valero's Sewer Pipeline and Process Drains, which stated the following:

> Valero complies with FF through 61.342(e)(2)(i), which allows the facility 6 Mg/yr of uncontrolled benzene waste. Thus, facilities are allowed to choose whether the benzene waste streams are controlled or uncontrolled as long as the uncontrolled stream quantities total less than 6 Mg/yr...Because the sewer and process drains are uncontrolled, they are not subject to 61.346, the standards for individual drain systems.

In its October 8, 2004 letter, EPA raised concerns over this applicability determination due to the District's failure to discuss the control requirements in 40 C.F.R. § 61.342(e)(1). Under the chosen compliance option, only wastes that have an average water content of 10% or greater may go uncontrolled (*see* 40 C.F.R. § 61.342(e)(2)) and it was not clear from the applicability determination that the emission sources met this requirement. In response to EPA's request for more information on this matter, the BAAQMD stated in its February 15, 2005 letter, "In the Revision 2 process, the District will determine which waste streams at the refineries are non-aqueous benzene waste streams. Section 61.342(e)(1) will be added to the source-specific tables for any source handling such waste. The District has sent letters to the refineries requesting the necessary information."

The District's response indicates that the Permit may be deficient because it may lack an applicable requirement, specifically Section 61.342(e)(1). Therefore, EPA is granting Petitioner's request to object to the Permit. The District must reopen the Permit to add Section

61.342(e)(1) to the source-specific tables for all sources that handle non-aqueous benzene waste streams or explain in the Statement of Basis why Section 61.342(e)(1) does not apply.

e. 40 C.F.R. Part 61, Subpart FF - 6BQ Compliance Option

Referencing EPA's October 8, 2004 letter, Petitioner claims that EPA identified an incorrect applicability determination regarding the 6BQ compliance option for benzene waste streams under 40 C.F.R. § 61.342(e). Petitioner claims that this should have resulted in an objection by EPA.

The EPA comment referenced by Petitioner is issue #12 in Attachment 2 of the Agency's October 8, 2004 letter to the BAAQMD. In that portion of its letter, EPA identified incorrect statements regarding the wastes that are subject to the 6 Mg/yr limit under 40 C.F.R. § 61.342(e)(2)(i). Specifically, the District stated that facilities are allowed to choose whether the benzene waste streams are controlled or uncontrolled as long as the uncontrolled stream quantities total less than 6 Mg/yr. In actuality, the 6 Mg/yr limit applies to all aqueous benzene wastes (both controlled and uncontrolled).

The fundamental issues raised by the EPA October 8, 2004 Letter were 1) whether or not the refineries are in compliance with the requirements of the benzene waste operations NESHAP, and 2) the need to remove the incorrect language from the Statement of Basis. The first issue is a matter of enforcement and does not necessarily reflect a flaw in the Permit. Absent information indicating that the refinery is actually out of compliance with the NESHAP, there is no basis for an objection by EPA. The second issue has already been corrected by the District. In response to EPA's comment, the District revised the Statement of Basis to state that the 6 Mg/yr limit applies to the benzene quantity in the total aqueous waste stream. *See* December 16, 2004 Statement of Basis at 26. Therefore, EPA is denying Petitioner's request to object to the Permit. However, in responding to this Petition, EPA identified additional incorrect language in the Permit. Specifically, Table VII-Refinery states, "Uncontrolled benzene <6 megagrams/year." *See* Permit at 476. As discussed above, this is clearly inconsistent with 40 C.F.R. § 61.342(e)(2). In addition, Table IV-Refinery contains a similar entry that states, "Standards: General; [Uncontrolled] 61.342(e)(2) Waste shall not contain more than 6.0 Mg/yr benzene." *See* Permit at 51. As a result, under a separate process, EPA is reopening the Permit pursuant to its authority under 40 C.F.R. § 70.7(g) to require that the District fix this incorrect language.

f. Parametric Monitoring for Electrostatic Precipitators

Petitioner claims EPA found that the Permit contains deficient particulate monitoring for sources that are abated by electrostatic precipitators (ESPs) and that are subject to limits under SIP-approved District Regulations 6-310 and 6-311. Petitioner requests that EPA object to the Permit to require appropriate monitoring.

BAAQMD Regulation 6-310 limits particulate matter emissions to 0.15 grains per dry

standard cubic foot, and Regulation 6-311 contains a variable limit based on a source's process weight rate. Because Regulation 6 does not contain monitoring provisions, the District relied on its periodic monitoring authority to impose monitoring requirements on sources S-5, S-6, and S-10 to ensure compliance with these standards. See 40 C.F.R. § 70.6(a)(3)(i)(B); BAAQMD Reg. 6-503; BAAQMD Manual of Procedures, Vol. III, Section 4.6. For sources S-5 and S-6, the Permit requires annual source tests for both emission limits. For S-10, the Permit requires an annual source test to demonstrate compliance with Regulation 6-310 but no monitoring is required for Regulation 6-311.

With regard to monitoring for Regulation 6-311 for source S-10, the Permit is inconsistent with the Statement of Basis. The final Statement of Basis indicates that Condition 19466, Part 9 should read, "The Permit Holder shall perform an annual source test on Sources S-5, S-6, S-8, S-10, S-11, S-12, S-176, S-232, S-233 and S-237 to demonstrate compliance with Regulation 6-311 (PM mass emissions rate not to exceed 4.10P0.67 lb/hr)." *See* December 16, 2004 Statement of Basis at 84. However, Part 9 of Condition 19466 in the Permit states that the monitoring requirement only applies to S-5 and S-6. December 16, 2004 Permit at 464. In addition, Table VII-B1 states that monitoring is not required. Therefore, EPA is granting Petitioner's request to object to the Permit as it pertains to monitoring S-10 for compliance with Regulation 6-311. The District must reopen the Permit to add monitoring requirements adequate to assure compliance with the emission limit or explain in the Statement of Basis why it is not needed.

Regarding the annual source tests for sources S-5, S-6, and S-10, EPA believes that an annual testing requirement is inadequate in the absence of additional parametric monitoring because proper operation and maintenance of the ESPs is necessary in order to achieve compliance with the emission limits. In the BAAQMD February 15, 2005 Letter, the District stated that it intends to "propose a permit condition requiring the operator to conduct an initial compliance demonstration that will establish a correlation between opacity and particulate emissions." Thus, EPA concludes the Permit does not meet the Part 70 standard that it contain periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance. *See* 40 C.F.R. § 70.6(a)(3)(i)(B). Therefore, EPA is granting Petitioner's request to object to the Permit. At a minimum, the Permit must contain monitoring which yields data that are representative of the source's compliance with its permit terms and conditions.

3. Attachment 3 of EPA's October 8, 2004 Letter

Attachment 3 of EPA's October 8, 2004 Letter memorialized the District's agreement to address two issues related to the Valero Permit. One issue pertains to applicability determinations for support facilities. EPA does not have adequate information demonstrating that the Valero facility has support facilities, nor has Petitioner provided any such information. EPA therefore finds no basis to object to the Permit and denies the Petition as to this issue.

The second issue pertains to the removal of a permit shield from BAAQMD Regulation 8-2. EPA has reviewed the most recent version of the Permit and determined that the shield was removed. Therefore, EPA is denying Petitioner's request to object to the permit as this issue is moot.

B. Permit Application

Applicable Requirements

Petitioner alleges that EPA must object to the Permit because it contains unresolved applicability determinations due to "deficiencies in the application and permit process" as identified in Attachment 2 to EPA's October 8, 2004 letter to the District.

During EPA's review of the Permit, BAAQMD asserted that, notwithstanding any alleged deficiencies in the application and permit process, the Permit sufficiently addressed these items or the requirements were not applicable. EPA requested that the District review some of the determinations of adequacy and non-applicability that it had already made. EPA believes that this process has resulted in improved applicability determinations. Petitioners have failed to demonstrate that such a generalized allegation of "deficiencies in the application and permit process" actually resulted in or may have resulted in a flaw in the Permit. Therefore, EPA denies the Petition on this basis.

2. Identification of Insignificant Sources

Petitioner contends that the permit application failed to list insignificant sources, resulting in a "lack of information ... [that] inhibits meaningful public review of the Title V permit." Petitioner further contends that, contrary to District permit regulations, the application failed to include a list of all emission units, including exempt and insignificant sources and activities, and failed to include emissions calculations for each significant source or activity. Petitioner lastly alleges that the application lacked an emissions inventory for sources not in operation during 1993.

Under Part 70, applications may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate a required fee amount. 40 C.F.R. § 70.5(c). Emission calculations in support of the above information are required. 40 C.F.R. § 70.5(c)(3)(viii). An application must also include a list of insignificant activities that are exempted because of size or production rate. 40 C.F.R. § 70.5(c).

District Regulation 2-6-405.4 requires applications for title V permits to identify and describe "each permitted source at the facility" and "each source or other activity that is exempt from the requirement to obtain a permit . . ." EPA's Part 70 regulations, which prescribe the minimum elements for approvable state title V programs, require that applications include a list of insignificant sources that are exempted on the basis of size or production rate. 40 C.F.R.

§ 70.5(c). EPA's regulations have no specific requirement for the submission of emission calculations to demonstrate why an insignificant source was included in the list.

Petitioner makes no claim that the Permit inappropriately exempts insignificant sources from any applicable requirements or that the Permit omits any applicable requirements. Similarly, Petitioner makes no claim that the inclusion of emission calculations in the application would have resulted in a different permit. Because Petitioner failed to demonstrate that the alleged flaw in the permitting process resulted in, or may have resulted in, a deficiency in the permit, EPA is denying the Petition on this ground.

EPA also denies Petitioner's claim because Petitioner fails to substantiate its generalized contention that the Permit is flawed. The Statement of Basis unambiguously explains that Section III of the Permit, *Generally Applicable Requirements*, applies to all sources at the facility, including insignificant sources:

> This section of the permit lists requirements that generally apply to all sources at a facility including insignificant sources and portable equipment that may not require a District permit....[S]tandards that apply to insignificant or unpermitted sources at a facility (e.g., refrigeration units that use more than 50 pounds of an ozone-depleting compound), are placed in this section.

Thus, all insignificant sources subject to applicable requirements are properly covered by the Permit.

Petitioner also fails to explain how meaningful public review of the Permit was "inhibited" by the alleged lack of a list of insignificant sources from the permit application.[4] We find no permit deficiency otherwise related to missing insignificant source information in the Permit application.

In addition, Petitioner fails to point to any defect in the Permit as a consequence of any missing significant emissions calculations in the permit application. The Statement of Basis for Section IV of the Permit states, "This section of the Permit lists the applicable requirements that apply to permitted or significant sources." Therefore, all significant sources and activities are properly covered by the Permit.

With respect to a missing emissions inventory for sources not in operation during 1993, Petitioner again fails to point to any resultant flaw in the Permit. These sources are appropriately addressed in the Permit.

For the foregoing reasons, EPA is denying the Petition on these issues.

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[4] In another part of the Petition, addressed below, Petitioner argues that the District's delay in providing requested information violated the District's public participation procedures approved to meet 40 C.F.R. § 70.7.

3. Identification of Non-Compliance

Petitioner argues that the District should have compelled the refinery to identify non-compliance in the application and provide supplemental information regarding non-compliance during the application process prior to issuance of the final permit on December 1, 2003. In support, Petitioner cites the section of its Petition (III.D.) alleging that the refinery failed to properly update its compliance certification.

Title V regulations do not require an applicant to supplement its application with information regarding non-compliance,[5] unless the applicant has knowledge of an incorrect application or of information missing from an application. Pursuant to 40 C.F.R. § 70.5(c)(8)(i) and (iii)(C), a standard application form for a title V permit must contain, *inter alia*, a compliance plan that describes the compliance status of each source with respect to all applicable requirements and a schedule of compliance for sources that are not in compliance with all applicable requirements at the time the permit issues. Section 70.5(b), *Duty to supplement or correct application*, provides that any applicant who fails to submit any relevant facts, or who has submitted incorrect information, in a permit application, shall, upon becoming aware of such failure or incorrect submission, promptly submit such supplemental or corrected information. In addition, Section 70.5(c)(5) requires the application to include "[o]ther specific information that may be necessary to implement and enforce other applicable requirements ... or to determine the applicability of such requirements."

Petitioner does not show that the refinery had failed to submit any relevant facts, or had submitted incorrect information, in its 1996 initial permit application. Consequently, the duty to supplement or correct the permit application described at 40 C.F.R. § 70.5(b) has not been triggered in this case.

Moreover, EPA disagrees that the requirement of 40 C.F.R. § 70.5(c)(5) requires the refinery to update compliance information in this case. The District is apprised of all new information arising after submittal of the initial application – such as NOVs, episodes and complaints – that may bear on the implementation, enforcement and/or applicability of applicable requirements. In fact, the District has an inspector assigned to the plant to assess compliance at least on a weekly basis. Therefore, it is not necessary to update the application with such information, as it is already in the possession of the District. Petitioner has failed to demonstrate that the alleged failure to update compliance information in the application resulted in, or may have resulted in, a deficiency in the Permit. For the foregoing reasons, EPA denies the Petition on this issue.

C. Assurance of Compliance with All Applicable Requirements Pursuant to the Act, Part 70 and BAAQMD Regulations

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[5] As discussed *infra*, title V regulations also do not require permit applicants to update their compliance certifications pending permit issuance.

1 Compliance Schedule

In essence, Petitioner claims that the District's consideration of the facility's compliance history during the title V permitting process was flawed because the District decided not to include a compliance schedule in the Permit despite a number of NOVs and other indications, in Petitioner's view, of compliance problems, and the District did not explain why a compliance schedule is not necessary. Specifically, Petitioner alleges that EPA must object to the Permit because the "District ignored evidence of recurring or ongoing compliance problems at the facility, instead relying on limited review of outdated records, to conclude that a compliance schedule is unnecessary." Petition at 11-19. Petitioner further alleges that a compliance schedule is necessary to address NOVs issued to the plant (including many that are still pending)[6], one-time episodes[7] reported by the plant, recurring violations and episodes at certain emission units, complaints filed with the District, and the lack of evidence that the violations have been resolved. The relief sought by Petitioner is for the District to include "a compliance schedule in the Permit, or explain why one was not necessary." *Id.* Petitioner additionally charges that, due to the facility's poor compliance history, additional monitoring, recordkeeping and reporting requirements are warranted to assure compliance with all applicable requirements. *Id.*

Section 70.6(c)(3) requires title V permits to include a schedule of compliance consistent with Section 70.5(c)(8). Section 70.5(c)(8) prescribes the requirements for compliance schedules to be submitted as part of a permit application. For sources that are not in compliance with applicable requirements at the time of permit issuance, compliance schedules must include "a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance." 40 C.F.R. § 70.5(c)(8)(iii)(C). The compliance schedule should "resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject." *Id.*

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, such as Petitioner's claims that the District improperly considered the facility's compliance history, EPA considers whether a Petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. See CAA § 505(b)(2) (requiring an objection "if the petitioner demonstrates ... that the permit is not in compliance with the requirements of this Act...."). In Petitioner's view, the deficiency that resulted here is the lack of a compliance schedule. For the reasons explained below, EPA grants

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[6]BAAQMD Regulation 1:401 provides for the issuance of NOVs: "Violation Notice: A notice of violation or citation shall be issued by the District for all violations of District regulations and shall be delivered to persons alleged to be in violation of District regulations. The notice shall identify the nature of the violation, the rule or regulation violated, and the date or dates on which said violation occurred."

[7]According to BAAQMD, "episodes" are "reportable events, but are not necessarily violations." Letter from Adan Schwartz, Senior Assistant Counsel, BAAQMD to Gerardo Rios, EPA Region IX, dated January 31, 2005.

the Petition to require the District to address in the Permit's Statement of Basis the NOVs that the District has issued to the facility and, in particular, NOVs that have not been resolved because they may evidence noncompliance at the time of permit issuance. EPA denies the Petition as to Petitioner's other compliance schedule issues.

a. Notices of Violation

In connection with its claim that the Permit is deficient because it lacks a compliance schedule, Petitioner states that the District issued 85 NOVs to Valero between 2001 and 2004 and 51 NOVs in 2003 and 2004. Petitioner highlights that, as of October 22, 2004, all 51 NOVs issued in 2003 and 2004 were unresolved and still "pending." Petition at 14-15. To support its claims, Petitioner attached to the Petition various District compliance reports and summaries, including a list of NOVs issued between January 1, 2003 and October 1, 2004. Thus, Petitioner essentially claims that the District's consideration of these NOVs during the title V permitting process was flawed, because the District did not include a compliance schedule in the Permit and did not explain why a compliance schedule is not necessary.

As noted above, EPA's Part 70 regulations require a compliance schedule for "applicable requirements for sources that are not in compliance with those requirements at the time of permit issuance." 40 C.F.R. §§ 70.6(c)(3), 70.5(c)(8)(iii)(C). Consistent with these requirements, EPA has stated that a compliance schedule is not necessary if a violation is intermittent, not on-going, and has been corrected before the permit is issued. *See In the Matter of New York Organic Fertilizer Company*, Petition Number II-2002-12 at 47-49 (May 24, 2004). EPA has also stated that the permitting authority has discretion not to include in the permit a compliance schedule where there is a pending enforcement action that is expected to result in a compliance schedule (i.e., through a consent order or court adjudication) for which the permit will be eventually reopened. *See In the Matter of Huntley Generating Station*, Petition Number II-2002-01, at 4-5 (July 31, 2003); *see also In the Matter of Dunkirk Power, LLC*, Petition Number II-2002-02, at 4-5 (July 31, 2003).[8]

Using the District's own enforcement records, Petitioner has demonstrated that approximately 50 NOVs were pending before the District at the time it proposed the revised Permit. The District's most recent statements, as of January 2005, do not dispute this fact.[9] The

[8]These orders considered whether a compliance schedule was necessary to address (i) opacity violations for which the source had included a compliance schedule with its application; and (ii) PSD violations that the source contested and was litigating in federal district court. As to the uncontested opacity violations, EPA required the permitting authority to reopen the permits to either incorporate a compliance schedule or explain that a compliance schedule was not necessary because the facility was in compliance. As to the contested PSD violations, EPA found that "[i]t is entirely appropriate for the [state] enforcement process to take its course" and for a compliance schedule to be included only after the adjudication has been resolved.

[9]As stated in a letter from Adan Schwartz, Senior Assistant Counsel, BAAQMD, to Gerardo Rios, Air Division, U.S. EPA Region 9, dated January 31, 2005, "The District is following up on each NOV to achieve an appropriate resolution, which will likely entail payment of a civil penalty." EPA provided a copy of this letter to

permitting record shows that the District issued the initial Permit on December 1, 2003 and the revised Permit on December 16, 2004. According to the District, the facility did not have noncompliance issues at the time it issued the initial and revised permits. The permitting record contains the following statements:

- July 2003 Statement of Basis,"Compliance Schedule" section: "The BAAQMD Compliance and Enforcement Division has conducted a review of compliance over the past year and has no records of compliance problems at this facility." July 2003 Statement of Basis at 12.

  July 2003 Statement of Basis, "Compliance Status" section: "The Compliance and Enforcement Division has prepared an Annual Compliance Report for 2001. . . The information contained in the compliance report has been evaluated during the preparation of the Statement of Basis for the proposed major Facility Review permit. The main purpose of this evaluation is to identify ongoing or recurring problems that should be subject to a schedule of compliance. No such problems have been identified." July 2003 Statement of Basis at 35. This section also noted that the District issued eight NOVs to the refinery in 2001, but did not discuss any NOVs issued to the refinery in 2002 or the first half of 2003. EPA notes that there appear to have been approximately 36 NOVs issued during that time, each of which is identified as pending in the documentation provided by Petitioner.

  December 16, 2004 Statement of Basis: "The facility is not currently in violation of any requirement. Moreover, the District has updated its review of recent violations and has not found a pattern of violations that would warrant imposition of a compliance schedule." December 2004 Statement of Basis at 34.

  2003 Response to Comments ("RTC") (from Golden Gate University): "The District's review of recent NOV's failed to reveal any evidence of current ongoing or recurring noncompliance that would warrant a compliance schedule." 2003 RTC (GGU) at 1.

EPA finds that the District's statements at the time it issued the initial and revised Permits do not provide a meaningful explanation for the lack of a compliance schedule in the Permit. Using the District's own enforcement records, Petitioner has demonstrated that there were approximately 50 unresolved NOVs at the time the revised Permit was issued in December 2004. The District's statements in the permitting record, however, create the impression that no NOVs were pending at that time. Although the District acknowledges that there have been "recent violations," the District fails to address the fact that it had issued a significant number of NOVs to the facility and that many of the issued NOVs were still pending. Moreover, the District provides only a conclusory statement that there are no ongoing or recurring problems that

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Petitioner on February 23, 2005.

could be addressed with a compliance schedule and offers no explanation for this determination. The District's statements give no indication that it actually reviewed the circumstances underlying recently issued NOVs to determine whether a compliance schedule was necessary. The District's mostly generic statements as to the refinery's compliance status are not adequate to support the District's decision that no compliance schedule was necessary in light of the NOVs.[10]

Because the District failed to include an adequate discussion in the permitting record regarding NOVs issued to the refinery, and, in particular, those that were pending at the time the Permit was issued, and an explanation as to why a compliance schedule is not required, EPA finds that Petitioner has demonstrated that the District's consideration of the NOVs during the title V permitting process may have resulted in a deficiency in the Permit. Therefore, EPA is granting the Petition to require the District to either incorporate a compliance schedule in the Permit or to provide a more complete explanation for its decision not to do so.

When the District reopens the Permit, it may consider EPA's previous orders in the Huntley, Dunkirk, and New York Organic Fertilizer matters to make a reasonable determination that no compliance schedule is necessary because (i) the facility has returned to compliance; (ii) the violations were intermittent, did not evidence on-going non-compliance, and the source was in compliance at the time of permit issuance; or (iii) the District has opted to pursue the matter through an enforcement mechanism and will reopen the permit upon a consent agreement or court adjudication of the noncompliance issues. Consistent with previous EPA orders, the District must also ensure that the permit shield will not serve as a bar or defense to any pending enforcement action.[11] *See Huntley* and *Dunkirk* Orders at 5.

b. Episodes

Petitioner also cites the number of "episodes" at the plant in the years 2003 and 2004 as a basis for requiring a compliance schedule. Episodes are events reported by the refinery of equipment breakdown, emission excesses, inoperative monitors, pressure relief valve venting, or other facility failures. Petition at 15, n. 21. According to the District, "[e]pisodes are reportable events, but are not necessarily violations. The District reviews each reported episode. For those that represent a violation, an NOV is issued." Letter from Adan Schwartz, Senior Assistant Counsel, BAAQMD to Gerardo Rios, EPA Region IX, dated January 31, 2005. The summary chart entitled "BAAQMD Episodes" attached to the Petition shows that the District specifically

[10]In contrast, EPA notes that the state permitting authority in the Huntley and Dunkirk Orders provided a thorough record as to the existence and circumstances regarding the pending NOVs by describing them in detail in the permits and acknowledging the enforcement issues in the public notices for the permits. Huntley at 6, Dunkirk at 6. In addition, EPA found that the permits contained "sufficient safeguards" to ensure that the permit shields would not preclude appropriate enforcement actions. *Id.*

[11]After reviewing the permit shield in the Permit, EPA finds nothing in it that could serve as a defense to enforcement of the pending NOVs. The District, however, should still independently perform this review when it reopens the Permit.

records for each episode, under the heading "Status," its determination for each episode: (i) no action; (ii) NOV issued; (iii) pending; and (iv) void. This document supports the District's statement that it reviews each episode to see whether it warrants an NOV. Because not every episode is evidence of noncompliance, the number of episodes is not a compelling basis for determining whether a compliance schedule is necessary. Moreover, Petitioner did not provide additional facts, other than the summary chart, to demonstrate that any reported episodes are violations. EPA therefore finds that Petitioner has not demonstrated that the District's consideration of the various episodes may have resulted in a deficiency in the Permit, and EPA denies the Petition as to this issue.

c. Repeat Violations and Episodes at Particular Units

Petitioner claims that certain units at the plant are responsible for multiple episodes and violations, "possibly revealing serious ongoing or recurring compliance issues." Petition at 16. The Petition then cites, as evidence, the existence of 16 episodes and 8 NOVs for the FCCU Catalytic Regenerator (S-5), 9 episodes and 4 NOVs for a hot furnace (S-220), 9 episodes and 2 NOVs for the Heat Recovery Steam Generator (S-1031), and 3 episodes and 2 NOVs for the South Flare (S-18).

A close examination of the BAAQMD Episodes chart relied upon by Petitioner, however, reveals that the failures identified for these episodes and NOVs are actually quite distinct from one another, often covering different components and regulatory requirements. This fact makes sense as emission and process units at refineries tend to be very complex with multiple components and multiple applicable requirements. When determining whether a compliance schedule is necessary for ongoing violations at a particular emission unit based on multiple NOVs issued for that unit, it would be reasonable for a permitting authority to consider whether the violations pertain to the same component of the emission unit, the cause of the violations is the same, and the cause has not been remedied through the District's enforcement actions. Again, Petitioner has failed to demonstrate that the District's consideration of the various repeat episodes and alleged violations may have resulted in a deficiency in the Permit. EPA therefore denies the Petition as to this issue.

d. Complaints

Petitioner contends that the "numerous complaints" received by the District between 2001 and 2004 also lay a basis for the need for a compliance schedule. These complaints were generally for odor, smoke or other concerns. As with the episodes discussed above, the mere existence of a complaint does not evidence a regulatory violation. Moreover, where the District has verified certain complaints, it has issued an NOV to address public nuisance issues. As such, even though complaints may indicate problems that need additional investigation, they do not necessarily lay the basis for a compliance schedule. Because Petitioner has not demonstrated that the complaints received by the District may have resulted in a deficiency in the Permit, EPA denies the Petition as to this issue.

e. Allegation that Problems are not Resolved

Petitioner proposes three "potential solutions to ensure compliance:" (1) the District should address recurring compliance at specific emission units, namely S-5, S-220 and S-1030, (2) the District should impose additional maintenance or installation of monitoring equipment, or new monitoring methods to address the 30 episodes involving inoperative monitors; and (3) the District should impose additional operational and maintenance requirements to address recurring problems since the source is not operating in compliance with the NSPS requirement to maintain and operate the facility in a manner consistent with good air pollution control practice for minimizing emissions. Petition at 18-19.

In regard to Petitioner's first claim for relief, EPA has already explained that Petitioner has not demonstrated that the District's consideration of the various 'recurring' violations for particular emission units may have resulted in a deficient permit or justifies the imposition of a compliance schedule. In regard to the second claim for relief, the 30 episodes cited by Petitioner are for different monitors, and spread over a multi-year period. As long as the District seeks prompt corrective action upon becoming aware of inoperative monitors, EPA does not see this as a basis for additional maintenance and monitoring requirements for the monitors. Moreover, EPA could only require additional monitoring requirements to the extent that the underlying SIP or some other applicable requirement does not already require monitoring. *See* 40 C.F.R. § 70.6(a)(3)(i)(B). Lastly, in response to Petitioner's third claim for relief seeking imposition of additional operation and maintenance requirements due to an alleged violation of the "good air pollution control practice" requirements of the NSPS, EPA believes that such an allegation of noncompliance is too speculative to warrant a compliance schedule without further investigation. As such, EPA finds that Petitioner has not demonstrated that the District's failure to include any of the permit requirements Petitioner requests here resulted in, or may have resulted in, a deficient permit, and EPA denies the Petition on this ground.

2. Non-Compliance Issues Raised by Public Comments

Petitioner claims that since the District failed to resolve New Source Review ("NSR")[12] compliance issues, EPA should object to the issuance of the Permit and require either a compliance schedule or an explanation that one is not necessary. Petition at 21. Petitioner claims to have identified four potential NSR violations at the refinery, as follows: (i) an apparent substantial rebuild of the fluid catalytic cracking unit ("FCCU") regenerator (S-5) without NSR review,[13] based on information that large, heavy components of the FCCU were recently

[12] "NSR" is used in this section to include both the nonattainment area New Source Review permit program and the attainment area Prevention of Significant Deterioration ("PSD") permit program.

[13] Petitioner also alleges that S-5 went through a rebuild without imposition of emission limitations and other requirements of 40 C.F.R. § 63 Subpart UUU. EPA notes that the requirements of Subpart UUU are included in the Permit with a future effective date of April 11, 2005. Permit at 80.

replaced; (ii) apparent emissions increases at two boiler units (S-3 and S-4) beyond the NSR significance level for modified sources of NOx, based on the District's emissions inventory indicating dramatic increases in NOx emissions between 1993 and 2001; and (iii) an apparent significant increase in SO_2 emissions at a coker burner (S-6), based on the District's emissions inventory indicating a dramatic increase in SO_2 emissions in 2001 over the highest emission rate during 1993 to 2000.[14] Petition at 20.

All sources subject to title V must have a permit to operate that assures compliance by the source with all applicable requirements. *See* 40 C.F.R. § 70.1(b); CAA §§ 502(a), 504(a). Such applicable requirements include the requirement to obtain NSR permits that comply with applicable NSR requirements under the Act, EPA regulations, and state implementation plans. *See generally* CAA §§ 110(a)(2)(C), 160-69, 172(c)(5), and 173; 40 C.F.R. §§ 51.160-66 and 52.21. NSR requirements include the application of the best available control technology ("BACT") to a new or modified source that results in emissions of a regulated pollutant above certain legally-specified amounts.[15]

Based on the information provided by Petitioner, Petitioner has failed to demonstrate that NSR permitting and BACT requirements have been triggered at the FCCU catalytic regenerator S-5, boilers S-3 or S-4, or coke burner S-6. With regard to the FCCU catalytic regenerator, Petitioner's only evidence in support of its claim is (i) an April 8, 1999, Energy Information Administration press release that states that the refinery announced the shutdown of its FCCU on March 19, 1999, and announced the restarting of the FCCU on April 1, 1999;[16] and (ii) information posted at the Web site of Surface Consultants, Inc., stating that "several large, heavy components on [the FCCU] needed replacement." *See* Petition, Exhibit A. Petitioner offers no evidence regarding the nature of these activities, whether the activities constitute a new or modified source under the NSR rules, or whether refinery emissions were in any way affected

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[14] Petitioner also takes issue with the District's position that "the [NSR] preconstruction review rules themselves are not applicable requirements, for purposes of Title V." (Petition, at 21; December 2003 Consolidated Response to Comments ("CRTC") at 6-7). Applicable requirements are defined in the District's Regulation 2-6-202 as "[a]ir quality requirements with which a facility must comply pursuant to the District's regulations, codes of California statutory law, and the federal Clean Air Act, including all applicable requirements as defined in 40 C.F.R. § 70.2." Applicable requirements are defined in 40 C.F.R. § 70.2 to include "any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act...." Since the District's NSR rules are part of its implementation plan, the NSR rules themselves are applicable requirements for purposes of title V. Since this point has little relevance to the matter at hand (i.e., whether in this case the NSR rules apply to a particular new or modified source at the refinery), EPA views the District's position as *obiter dictum*.

[15] The Act distinguishes between the requirement to apply BACT, which is part of the PSD permit program for attainment areas, and the requirement to apply the lowest achievable emission rate ("LAER"), which is part of the NSR permit program for nonattainment areas. In this case, however, the District's NSR rules use the term "BACT" to signify "LAER."

[16] This press release is available on the Internet at http://www.eia.doe.gov/neic/press/press123.html (last viewed on February 1, 2005).

by these activities.

With regard to the two boilers and the coke burner, Petitioner's only evidence in support of its claims are apparent "dramatic" increases in each of these unit's emissions inventory. However, as the District correctly notes:

> "...the principal purpose of the inventory is planning; the precision needed for this purpose is fairly coarse. The inventory emissions are based, in almost all cases, on *assumed* emission factors, and *reported* throughputs. An increase in emissions from one year to the next as reflected in the inventory may be an indication that reported throughput has increased, however it does not automatically follow that the source has been modified. Unless the throughput exceeds permit limits, the increase usually represents use of previously unused, but authorized, capacity. An increase in reported throughput amount could be taken as an indication that further investigation is appropriate to determine whether a modification has occurred. However, the District would not conclude that a modification has occurred simply because reported throughput has increased."

December 1, 2003 Consolidated Response to Comments ("2003 CRTC"), at 22. Moreover, Petitioner does not claim to have sufficient evidence to establish that these units are subject to NSR permitting and the application of BACT. The essence of Petitioner's objection is the need for the District to "determine whether the sources underwent a physical change or change in the method of operation that increased emissions, which would trigger NSR." Petition at 20. Not only is Petitioner unable to establish that these units triggered NSR requirements, Petitioner is not even alleging that NSR requirements have in fact been triggered. Petitioner is merely requesting that the District make an NSR applicability determination based on Petitioner's "well-documented *concerns* regarding *potential* non-compliance." Petition at 20 (*emphasis added*).

During the title V permitting process, EPA has also been pursuing similar types of claims in another forum. As part of its National Petroleum Refinery Initiative, EPA identified four of the Act's programs where non-compliance appeared widespread among petroleum refiners, including apparent major modifications to FCCUs and refinery heaters and boilers that resulted in significant increases in NOx and SO_2 emissions without complying with NSR requirements. However, based on the information provided by Petitioner, EPA is not prepared to conclude at this time that these units at the Valero refinery are out of compliance with NSR requirements. If EPA later determines that these units are in violation of NSR requirements, EPA may object to or reopen the title V permit to incorporate the applicable NSR requirements.[17]

Since Petitioner has failed to show that NSR requirements apply to these units, EPA finds

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[17] EPA notes that with respect to the specific claims of NSR violations raised by Petitioner in its comments, the District "intends to follow up with further investigation." December 1, 2003 CRTC, at 22. EPA encourages the District to do so, especially where, as in this case, the apparent changes in the emissions inventories are substantial.

that Petitioner has not met its burden of demonstrating a deficiency in the Permit. Therefore, the Petition is denied on this issue.

3. Intermittent and Continuous Compliance

Petitioner contends that EPA must object to the Permit because the District has interpreted the Act to require only intermittent rather than continuous compliance. Petition at 21-22. Petitioner contends that the District has a "fundamentally flawed philosophy." Petitioner points to a statement made by the District in its Response to Public Comments, dated December 1, 2003, that "[c]ompliance by the refineries with all District and federal air regulations will not be continuous." Petitioner contends that the District "expects only intermittent compliance" and that the District's belief "that it need only assure 'reasonable intermittent' compliance" means that it failed to see the need for a compliance plan in the Permit.

EPA disagrees with Petitioner's suggestion that the District's view of intermittent compliance has impaired its ability to properly implement the title V program. As stated above, EPA has not concluded that a compliance plan is necessary to address the instances of non-compliance at this Facility. Moreover, the Agency disagrees with Petitioner's interpretations of the District's comments on the issue. For instance, EPA finds nothing in the record stating that the District's view of the Permit, as a legal matter, is that it need assure only intermittent compliance. Rather, a fairer reading of the District's view is that, realistically, intermittent non-compliance can be expected. As the District stated:

> The District cannot rule out that instances of non-compliance will occur. Indeed at a refinery, at least occasional events of non-compliance can be predicted with a high degree of certainty. . . . Compliance by the refineries with all District and federal air regulations will not be continuous. However, the District believes the compliance record at this [Shell] and other refineries is well within a range to predict reasonable intermittent compliance. December 1, 2003 RTC at 15.

The District's view appears to be based on experience and the practical reality that complex sources with thousands of emission points which are subject to hundreds of local and federal requirements will find themselves out of compliance, not necessarily because their permits are inadequate but because of the limits of technology and other factors. Even a source with a perfectly-drafted permit – one that requires state of the art monitoring, scrupulous recordkeeping, and regular reporting to regulatory agencies – may find itself out of compliance, not because the permit is deficient, but because of the limitations of technology and other factors.

EPA also believes that, far from sanctioning intermittent compliance, as Petitioner suggests, *see* Petition at 22, n. 36, the District appears committed to address it through enforcement of the Permit, when appropriate: "when non-compliance occurs, the Title V permit will enhance the ability to detect and enforce against those occurrences." *Id.* Although the District may realistically expect instances of non-compliance, it does not necessarily excuse

them. Non-compliance may still constitute a violation and may be subject to enforcement action.

For the reasons stated above, EPA denies the Petition on this ground.

4. Compliance Certifications

Initial compliance certifications must be made by all sources that apply for a title V permit at the time of the permit application. *See* 40 C.F.R. § 70.5(c)(9). The Part 70 regulations do not require applicants to update their compliance certification pending issuance of the permit. Petitioner correctly points out that the District's Regulation 2-6-426 requires annual compliance certifications on "every anniversary of the application date" until the permit is issued. Petitioner claims that, other than a truncated update in 2003, the plant has failed to provide annual certifications between the initial permit application submittal in 1996 and issuance of the permit in December 2004. Petitioner believes that "defects in the compliance certification procedure have resulted in deficiencies in the Permit." Petition at 24.

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, including compliance certifications, EPA considers whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. *See* CAA Section 505(b)(2) (objection required "if the petitioner demonstrates ... that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]"); 40 C.F.R. § 70.8(c)(1); *See also In the Matter of New York Organic Fertilizer Company*, Petition No. II-2002-12 (May 24, 2004), at 9. Petitioner assumes, in making its argument, that the District needs these compliance certifications to adequately review compliance for the facility. This is not necessarily true. Sources often certify compliance based upon information that has already been presented to a permitting authority or based upon NOVs or other compliance documents received from a permitting authority. The requirement for the plant to submit episode and other reports means that the District should be privy to all of the information available to the source pertaining to compliance, regardless of whether compliance certifications have been submitted annually. Finally, the District has a dedicated employee assigned as an inspector to the plant who visits the plant weekly and sometimes daily. In this particular instance, the compliance certification would likely not add much to the District's knowledge about the compliance status of the plant. EPA believes that in this case, Petitioner has failed to demonstrate that the lack of a proper initial compliance certification, or the alleged failure to properly update that initial compliance certification, resulted in, or may have resulted in, a deficiency in the permit.

D. Statement of Basis

Petitioner alleges that the Statements of Basis for the Permit issued in December 2003 and for the revised Permit, as proposed in August 2004, are inadequate. Specifically, Petitioner alleges the following deficiencies:

Neither Statement of Basis contains detailed facility descriptions, including comprehensive process flow information;

- Neither Statement of Basis contains sufficient information to determine applicability of "certain requirements to specific sources." Petitioner specifically identifies exemptions from permitting requirements that BAAQMD allowed for tanks. Petitioner also references Attachments 2 and 3 to EPA's October 8, 2004 letter as support for its allegation that the Statements of Basis were deficient because they did not address applicability of 40 C.F.R. Part 63, Subpart CC to flares and BAAQMD Regulation 8-2 to hydrogen plant vents.

- Neither Statement of Basis addresses BAAQMD's compliance determinations

- The 2003 Statement of Basis was not made available on the District's Web site during the April 2004 public comment period and does not include information about permit revisions in March and August 2004

  The 2004 Statement of Basis does not discuss changes BAAQMD made to the Permit between the public comment period in August 2003 and the final version issued in December 2003, despite the District's request for public comment on such changes.

EPA's Part 70 regulations require permitting authorities, in connection with initiating a public comment period prior to issuance of a title V permit, to "provide a statement that sets forth the legal and factual basis for the draft permit conditions." 40 C.F.R. § 70.7(a)(5). EPA's regulations do not require that a statement of basis contain any specific elements; rather, permitting authorities have discretion regarding the contents of a statement of basis. EPA has recommended that statements of basis contain the following elements: (1) a description of the facility; (2) a discussion of any operational flexibility that will be utilized at the facility; (3) the basis for applying the permit shield; (4) any federal regulatory applicability determinations; and (5) the rationale for the monitoring methods selected. EPA Region V has also recommended the inclusion of the following: (1) monitoring and operational restrictions requirements; (2) applicability and exemptions; (3) explanation of any conditions from previously issued permits that are not being transferred to the title V permit; (4) streamlining requirements; and (5) certain other factual information as necessary. *See, Los Medanos*, at 10, n.16.

There is no legal requirement that a permitting authority include information such as a specific facility description and process flow diagrams in the Statement of Basis, and Petitioner has not shown how the lack of this information resulted in, or may have resulted in, a deficiency in the Permit. Thus, while a facility description and process flow diagrams might provide useful information, their absence from the Statement of Basis does not constitute grounds for objecting to the Permit.

EPA agrees, in part, that Petitioner has demonstrated the Permit is deficient because the

Statement of Basis does not explain exemptions for certain tanks. This issue is addressed more specifically in Section III.H.3.

EPA agrees with Petitioner's allegation that the Statement of Basis should have included a discussion regarding applicability of 40 C.F.R. Part 63, Subpart CC to flares and BAAQMD Regulation 8-2 to hydrogen plant vents. Applicability determinations are precisely the type of information that should be included in a Statement of Basis. This issue is addressed more specifically in Section III.H.1.

EPA addressed Petitioner's allegations relating to the sufficiency of the discussion in the Statement of Basis on the necessity of a compliance schedule in Section III.C.

EPA does not agree with Petitioner's allegations that the 2003 Statement of Basis was deficient because it was not available on the District's Web site during the 2004 public comment period or because it did not provide information about the 2004 reopening. First, EPA notes that the 2003 Statement of Basis has been available to the public on its own Web site since the initial permit was issued in December, 2003.[18] In addition, Petitioner has not established a legal basis to support its claim that this information is a required element for a Statement of Basis. Petitioner also concedes that the District provided a different Statement of Basis in connection with the 2004 reopening. Petitioner does not claim that the Permit is deficient as a result of any of these alleged issues regarding the Statement of Basis, therefore, EPA denies the Petition on this ground..

EPA does not agree with Petitioner's allegations that the 2004 Statement of Basis was deficient because it did not discuss any changes made between the draft permit available in August 2003 and the final Permit issued in December 2003. Petitioner has not established a legal basis to support its claim that this information is a required element for a Statement of Basis. Petitioner has not demonstrated that the Permit is deficient because the District did not provide this discussion in the 2004 Statement of Basis. Moreover, Petitioner could have obtained much of this information by reviewing the District's response to comments received during the 2003 public comment period, which was dated December 1, 2003. Therefore, EPA denies the Petition on this ground.

E. Permit Shields

The District rules allow two types of permit shields. The permit shield types are defined as follows: (1) A provision in a title V permit explaining that specific federally enforceable regulations and standards do not apply to a source or group of sources, or (2) A provision in a title V permit explaining that specific federally enforceable applicable requirements for monitoring, recordkeeping and/or reporting are subsumed because other applicable requirements

[18]Title V permits and related documents are available through Region IX's Electronic Permit Submittal System at http://www.epa.gov/region09/air/permit/index.html.

for monitoring, recordkeeping, and reporting in the permit will assure compliance with all emission limits. The District uses the second type of permit shield for all streamlining of monitoring, recordkeeping, and reporting requirements in title V permits. The District's Statement of Basis explains: "Compliance with the applicable requirement contained in the permit automatically results in compliance with any subsumed (= less stringent) requirement." See December 2003 Statement of Basis at 27.

40 C.F.R. §§ 60.7(c) and (d)

Petitioner alleges that the permit shield in Table IX B of the Permit (p669-670) improperly subsumes 40 C.F.R. §§ 60.7(c) and (d) under SIP-approved BAAQMD Regulation 1-522.8, and that the Statement of Basis does not sufficiently explain the basis for the shield. Petition at 28.

BAAQMD Regulation 1-522.8 requires that:

> Monitoring data shall be submitted on a monthly basis in a format specified by the APCO. Reports shall be submitted within 30 days of the close of the month reported on.

Sections 60.7(c) and (d) require very specific reporting requirements that are not required by BAAQMD Regulation 1-522.8. For instance, § 60.7(c)(1) requires that excess emissions reports include the magnitude of excess emissions computed in accordance with § 60.13(h) and any conversion factors used. Section 60.7(d)(1) requires, that the report form contain, among other things, the duration of excess emissions due to startup/shutdown, control equipment problems, process problems, other known causes, and unknown causes and total duration of excess emissions.

The Statement of Basis for Valero contains the following justification for the shield:

> 40 C.F.R. Part, 60 Subpart A CMS reporting requirements are satisfied by BAAQMD 1-522.8 CEMS reporting requirements. *See* December 2003 Statement of Basis at 31.

EPA agrees with Petitioner that the requirements of 40 C.F.R. §§ 60.7(c) and (d) are not satisfied by BAAQMD Regulation 1-522.8, and that the Statement of Basis does not provide adequate justification for subsuming §§ 60.7(c) and (d). An adequate justification should address *how* the requirements of a subsumed regulation are satisfied by another regulation, not simply that the requirements *are* satisfied by another regulation.

For the reasons set forth above, EPA is granting the Petition on these grounds. The District must reopen the Permit to include the reporting requirements of §§ 60.7(c) and (d) or adequately explain how they are appropriately subsumed.

2. BAAQMD Regulation 1-7

Petitioner also alleges that the District incorrectly attempted to subsume the State-only requirements of BAAQMD Regulation 11-7 for valves under the requirements of SIP approved BAAQMD Regulation 8-18-404, and states that only a federal requirement may be subsumed in the permit pursuant to BAAQMD Regulation 2-6-233.2. Petition at 29.

Including a permit shield for a subsumed non-federally enforceable regulation has no regulatory significance from a federal perspective because it is not related to whether the permit assures compliance with all Clean Air Act requirements. See 40 C.F.R. 70.2 (defining "applicable requirement"); 70.1(b) (requiring that title V sources have operating permits that assure compliance with all applicable requirements). State only requirements are not subject to the requirements of title V and, therefore, are not evaluated by EPA unless their terms may either impair the effectiveness of the title V permit or hinder a permitting authority's ability to implement or enforce the title V permit. *In the Matter of Eastman Kodak Company*, Petition No.: II-2003-02, at 37 (Feb. 18, 2005). Therefore, EPA is denying the Petition on this issue.

3. 40 C.F.R. § 60.482-7(g)

Petitioner alleges that a permit shield should not be allowed for federal regulation NSPS Subpart VV, § 60.482-7(g) based upon its being subsumed by SIP-approved BAAQMD Regulation 8-18-404 because the NSPS defines monitoring protocols for valves that are demonstrated to be unsafe to monitor, whereas Regulation 8-18-404 refers to an alternative inspection scheme for leak-free valves. Petitioner states "Because the BAAQMD regulation does not address the same issue as 40 C.F.R. § 60.482-7(g), it cannot subsume the federal requirement." Petition at 29.

EPA disagrees with Petitioner that the two regulations address different issues. Both regulations address alternative inspection time lines for valves. Regulation 8-18-404 specifically states:

> Alternative Inspection Schedule: The inspection frequency for valves may change from quarterly to annually provided all of the conditions in Subsection 404.1 and 404.2 are satisfied.
>
> > 404.1 The valve has been operated leak free for five consecutive quarters;
> > 404.2 Records are submitted and approval from the APCO is obtained.
> > 404.3 The valve remains leak free. If a leak is discovered, the inspection frequency will revert back to quarterly.

NSPS Subpart VV requires valves to be monitored monthly except, pursuant to § 60.482-7(g), any valve that is designated as unsafe to monitor must only be monitored as frequently as practicable during safe-to-monitor times. In explaining the basis for the shield, the Permit states:

> [60.482-7(g)] Allows relief from monthly monitoring if designated as unsafe-to-monitor. BAAQMD Regulation 8-18-404 does not allow this relief. Permit at 644.

BAAQMD is correct that the Regulation 8-18-404 is more stringent than 40 C.F.R. § 60.482-7(g). Therefore, EPA is denying the Petition on this issue.

F. Throughput Limits for Grandfathered Sources

Petitioner alleges that EPA should object to the Permit to the extent that throughput limits for grandfathered sources set thresholds below which sources are not required to submit all information necessary to determine whether "new or modified construction may have occurred." Petitioner also alleges that the thresholds are not "legally correct" and therefore are not reasonably accurate surrogates for a proper NSR baseline determination. Petitioner also argues that EPA should object to the Permit because the existence of the throughput limits, even as reporting thresholds, may create "an improper presumption of the correctness of the threshold" and discourage the District from investigating events that do not trigger the threshold or reduce penalties for NSR violations. Finally, Petitioner also requests that EPA object to the Permit because the District's reliance on non-SIP Regulation 2-1-234.1 "in deriving these throughput limits" is improper.

The District has established throughput limits on sources that have never gone through new source review ("grandfathered sources"). The Clean Air Act does not require permitting authorities to impose such requirements. Therefore, to understand the purpose of these limits, EPA is relying on the District's statements characterizing the reasons for, and legal implications of, these throughput limits. The District's December 2003 CRTC makes the following points regarding throughput limits:

- The throughput limits being established for grandfathered sources will be a useful tool that enhances compliance with NSR. . . .Requiring facilities to report when throughput limits are exceeded should alert the District in a timely way to the possibility of a modification occurring.

  The limits now function merely as reporting thresholds rather than as presumptive NSR triggers.

  They do not create a baseline against which future increases might be measured ("NSR baseline"). Instead, they act as a presumptive indicator that the equipment has undergone an operational change (even in the absence of a physical change), because the equipment has been operated beyond designed or as-built capacity.

  The throughput limits do not establish baselines; furthermore, they do not contravene NSR requirements. The baseline for a modification is determined at the time of

permit review. The proposed limits do not preclude review of a physical modification for NSR implications.

- Throughput limits on grandfathered sources are not federally enforceable.

- The [permits] have been modified to clearly distinguish between limits imposed through NSR and limits imposed on grandfathered sources.

December 1, 2003 RTC at 31-33.

EPA believes the public comments and the District's responses have done much to describe and explain, in the public record, the purpose and legal significance of the District's throughput limits for grandfathered sources. Based on these interactions, EPA has the following responses to Petitioner's allegations.

First, EPA denies the Petition as to the allegation that the thresholds set levels below which the facility need not apply for NSR permits. As the District states, the thresholds do not preclude the imposition of federal NSR requirements. EPA does not see that the throughput limits would shield the source from any requirements to provide a timely and complete application if a construction project will trigger federal NSR requirements.

Second, the Permit itself makes clear that the throughput limits are not to be used for the purpose of establishing an NSR baseline: "Exceedance of this limit does not establish a presumption that a modification has occurred, nor does compliance with the limit establish a presumption that a modification has not occurred." Permit at 4. Therefore, EPA finds no basis to object to the Permit on the ground that the thresholds are not "reasonably accurate surrogates" for an actual NSR baseline, as they clearly and expressly have no legal significance for that purpose.

Third, while EPA shares Petitioner's interest in compliance with NSR requirements, Petitioner's concern that the thresholds might discourage reliance on appropriate NSR baselines to investigate and enforce possible NSR violations is speculative and cannot be the basis of an objection to the Permit.

Fourth, EPA finds that the District's reliance on BAAQMD Regulation 2-1-234.1, which is not SIP-approved, to impose these limits is appropriate. EPA's review of the Permit, however, found a statement suggesting that the District will rely on this non-SIP approved rule to determine whether an NSR modification has occurred. EPA takes this opportunity to remind the District that its NSR permits must meet the requirements of the federally-applicable SIP. *See* CAA 172, 173; 40 C.F.R. § 51. EPA finds no basis, however, to conclude that the Permit is deficient.

G. Monitoring

The lack of monitoring raises an issue as to consistency with the requirement that each permit contain monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit where the applicable requirement does not require periodic monitoring or testing. *See* 40 C.F.R. § 70.6(a)(3)(i)(B). EPA has recognized, however, that there may be limited cases in which the establishment of a regular program of monitoring or recordkeeping would not significantly enhance the ability of the permit to assure compliance with an applicable requirement and where the status quo (i.e., no monitoring or recordkeeping) could meet the requirements of 40 C.F.R. § 70.6(a)(3). *See, Los Medanos*, at 16. EPA's consideration of these issues and determinations as to the adequacy of monitoring follow.

1 40 C.F.R. Part 60, Subpart J (NSPS for Petroleum Refineries)

Petitioner makes the following allegations with regard to the treatment of flares under NSPS Subpart J: (i) BAAQMD has not made a determination as to the applicability of NSPS Subpart J to three of the four flares at Valero; (ii) there is no way to tell whether flares qualify for the exemption in NSPS Subpart J because there are no requirements in the Permit to ensure that the flares are operated only in "emergencies;" (iii) the Permit must contain a federally enforceable reporting requirement to verify that each flaring event would qualify for an exemption from the H2S limit; (iv) the Permit fails to ensure that all other NSPS Subpart J requirements are practically enforceable; and (v) federally enforceable monitoring must be imposed pursuant to 40 C.F.R. §§ 70.6(a)(3)(i)(B) and 70.6(c) and Section 504(c) of the Act to verify compliance with all applicable requirements of Subpart J. Petition at 33.

The New Source Performance Standard (NSPS) for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J, prohibits the combustion of fuel gas containing H_2S in excess of 0.10 gr/dscf at any flare built or modified after June 11, 1973. This prohibition is codified in 40 C.F.R. § 60.104(a)(1). Additionally, 40 C.F.R. §§ 60.105(a)(3-4) requires the use of continuous monitors for flares subject to § 60.104(a)(1). However, the combustion of gases released as a result of emergency malfunctions, process upsets, and relief valve leakage is exempt from the H_2S limit. The draft refinery permits proposed by BAAQMD in February 2004 applied a blanket exemption from the H_2S standard and associated monitoring for about half of the Bay Area refinery flares on the basis that the flares are "not designed" to combust routine releases. The statements of basis for the refinery permits state, however, that at least some of these flares are "physically capable" of combusting routine releases. To help assure that this subset of flares would not trigger the H_2S standard, BAAQMD included a condition in the permits prohibiting the combustion of routine releases at these flares.

Following EPA comments submitted to BAAQMD in April of 2004, BAAQMD revised its approach to the NSPS Subpart J exemption. The permits proposed to EPA in August of 2004 indicate that all flares that are affected units under 60.100 are subject to the H2S standard, except when they are used to combust process upset gases, and gases released to the flares as a result of relief valve leakages or other malfunctions. However, the permits were not revised to include the

continuous monitors required under §§ 60.105(a)(3) and (4) on the basis that the flares will always be used to combust non-routine releases and thus will never actually trigger the H2S standard or the requirement to install monitors.

With respect to Petitioner's first allegation, BAAQMD has clearly considered applicability of NSPS Subpart J to flares, and has indicated that NSPS Subpart J applies to one, S-19. Page 16 of the December 2004 Statement of Basis states:

> The Benicia Refinery has three separate flare header systems: 1) the main flare gas recovery header with flares S-18 and S-19, 2) the acid gas flare header with flare S-16, and 3) the butane flare header with flare S-17. Flares S-16 and S-18 were placed in service during the original refinery startup in 1968. Flare S-17 was placed in service with the butane tank TK-1726 in 1972. Flare S-19 was added to the main gas recovery header in 1974 to ensure adequate relief capacity for the refinery. S-19 is subject to NSPS Subpart J, because it was a fuel gas combustion device installed after June 11, 1973, the effective date of 60.100(b).

The table on page 18 of the Statement of Basis also directly states that flares S-16, S-17, and S-18 are not subject to NSPS Subpart J. While the Permit would be clearer if BAAQMD included a statement that the flares have not been modified so as to trigger the requirements of NSPS Subpart J, such a statement is not required by title V. Therefore, EPA is denying the Petition on this issue.

However, EPA agrees with Petitioner that the Permit is flawed with respect to issues (ii) and (iii) above. First, the continuous monitoring of §§ 60.105(a)(3) and (4) is not included in the Permit because, BAAQMD claims, flare S-19 is never used in a manner that would trigger the H2S standard and the requirement to install a continuous monitor. While the Permit does contain District–enforceable only monitoring to show compliance with a federally enforceable condition prohibiting the combustion of routinely-released gases in a flare (20806, #7), there is currently no federally enforceable monitoring requirement in the Permit to demonstrate compliance with this condition or with NSPS Subpart J, both federally enforceable applicable requirements. Because NSPS Subpart J is an applicable requirement, the Permit must contain periodic monitoring pursuant to 40 C.F.R. § 70.6(a)(3)(i)(B) and BAAQMD Reg. 6-503 (BAAQMD Manual of Procedures, Vol. III, Section 4.6) to show compliance with the regulation.

Therefore, EPA is granting the Petition on the basis that the Permit does not assure compliance with NSPS Subpart J, or with federally enforceable permit condition 20806, #7. BAAQMD must reopen the Permit to either include the monitoring under sections 60.105(a)(3) or (4), or, for example, to include adequate federally enforceable monitoring to show compliance with condition 20806, #7.

With respect to issues (iv) and (v), it is unclear what other requirements Petitioner is referring to, or what monitoring Petitioner is requesting. For these reasons, EPA is denying the

Petition on these grounds.

2. Flare Opacity Monitoring

Petitioner notes that flares are subject to SIP-approved BAAQMD Regulation 6-301, which prohibits visible emissions from exceeding defined opacity limits for a period or periods aggregating more than three minutes in any hour. Petitioner alleges that the opacity limit set forth in Regulation 6-301 is not practically enforceable during short-duration flaring events because no monitoring is required for flaring events that last less than fifteen minutes and only limited monitoring is required for events lasting less than thirty minutes. Petitioner alleges that repeated violations of BAAQMD Regulation 6-301 due to short-term flaring could be an ongoing problem that evades detection.

The opacity limit in Regulation 6-301 does not contain periodic monitoring. Because the underlying applicable requirement imposes no monitoring of a periodic nature, the Permit must contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit . . . ." 40 C.F.R. § 70.6(a)(3)(i)(B). Thus, the issue before EPA is whether the monitoring imposed in the Permit will result in reliable and representative data from the relevant time period such that compliance with the Permit can be determined.

In this case, the District has imposed certain monitoring conditions to determine compliance with the opacity standard during flaring events. The Permit defines a "flaring event" as a flow rate of vent gas flared in any consecutive 15 minute period that continuously exceeds 330 standard cubic feet per minute (scfm). Within 15 minutes of detecting a flaring event, the facility must conduct a visible emissions check. The visible emissions check may be done by video monitoring. If the operator can determine there are no visible emissions using video monitoring, no further monitoring is required until another 30 minutes has expired. If the operator cannot determine there are no visible emissions using video monitoring, the facility must conduct either an EPA Reference Method 9 test or survey the flare according to specified criteria. If the operator conducts Method 9 testing, the facility must monitor the flare for at least 3 minutes, or until there are no visible emissions. If the operator conducts the non-Method 9 survey, the facility must cease operation of the flare if visible emissions continue for three consecutive minutes.

Although EPA agrees with Petitioner that the Permit does not require monitoring during short-duration flaring events, EPA does not believe Petitioner has demonstrated that the periodic monitoring is inadequate. For instance, Petitioner has not shown that short-duration flaring events are likely to be in violation of the opacity standard, nor has Petitioner made a showing that short-duration flaring events occur frequently or at all. Thus, Petitioner has not demonstrated that the periodic monitoring in the Permit is insufficient to detect violations of the opacity standard.

Additionally, in June 1999, a workgroup comprised of EPA, CAPCOA and CARB staff completed a set of periodic monitoring recommendations for generally applicable SIP requirements such as Regulation 6-301. The workgroup's relevant recommendation for refinery flares was a visible emissions check "as soon as an intentional or unintentional release of vent gas to a gas flare but no later than one hour from the flaring event." *See* CAPCOA/CARB/EPA Region IX Periodic Monitoring Memo, June 24, 1999, at 2. In comparison, the periodic monitoring contained in the Permit would appear to be both less stringent, by not requiring monitoring for up to thirty minutes of a release of gas to a flare, and more stringent, by requiring monitoring within 30 minutes rather than one hour. Therefore, EPA encourages the District to amend the Permit to require monitoring upon the release to the flare, rather than delaying monitoring as currently set forth in the Permit.

Finally, EPA notes that the Permit does not prevent the use of credible evidence to demonstrate violations of permit terms and conditions. Even if the Permit does not require visible emissions checks for short-duration flaring events, EPA, the District, and the public may use any credible evidence to bring an enforcement case against the source. 62 Fed. Reg. 8314 (Feb. 24, 1997).

For the reasons cited above, EPA is denying the Petition on this issue.

3 Cooling Tower Monitoring

Petitioner claims that the Permit lacks monitoring conditions adequate to assure that the cooling tower complies with SIP-approved District Regulations 8-2 and 6. Petitioner further alleges that the District's decisions to not require monitoring for the cooling towers is flawed due to its use of AP-42 emission factors, which may not be representative of the actual cooling tower emissions.

a. Regulation 8-2

District Regulation 8-2-301 prohibits miscellaneous operations from discharging into the atmosphere any emission that contains 15 lb per day and a concentration of more than 300 ppm total carbon. Although the underlying applicable requirement does not contain periodic monitoring requirements, the District declined to impose monitoring on source S-29 to assure compliance with the emission limit.[19]

The December 1, 2003 Statement of Basis sets forth the grounds for the District's decision that monitoring is not necessary to assure compliance with this applicable requirement. First, the District stated that its monitoring decisions were made by balancing a variety of factors including 1) the likelihood of a violation given the characteristics of normal operation, 2) the degree of variability in the operation and in the control device, if there is one, 3) the potential

[19] *See* Permit, Table VII – C5 Cooling Tower, pp. 541

severity of impact of an undetected violation, 4) the technical feasibility and probative value of indicator monitoring, 5) the economic feasibility of indicator monitoring, and 6) whether there is some other factor, such as a different regulatory restriction applicable to the same operation, that also provides some assurance of compliance with the limit in question. In addition, the District provided calculations that purported to quantify the emissions from the facility's cooling tower. The calculations relied upon water circulation and exhaust airflow rates supplied by the refinery in addition to two AP-42 emission factors. The District found that the calculated emissions were much lower than the regulatory limit and concluded that monitoring was not necessary. Although it is true that the results suggest there may be a large margin of compliance, the nature of the emissions and the unreliability of the data used in the calculations renders them inadequate to support a decision that no monitoring is needed over the entire life of the permit.

An AP-42 emission factor is a value that roughly correlates the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant. The use of these emission factors may be appropriate in some permitting applications, such as establishing operating permit fees. However, EPA has stated that AP-42 factors do not yield accurate emissions estimates for individual sources. *See In the Matter of Cargill, Inc.*, Petition IV-2003-7 (Amended Order) at 7, n.3 (Oct.19, 2004); *In re: Peabody Western Coal Co.*, CAA Appeal No. 04-01, at 22-26 (EAB Feb. 18, 2005). Because emission factors essentially represent an average of a range of facilities and emission rates, they are not necessarily indicative of the emissions from a given source at all times; with a few exceptions, use of these factors to develop source-specific permit limits or to determine compliance with permit requirements is generally not recommended. The District's reliance on the emission factors in making its monitoring decision is therefore problematic.

Atmospheric emissions from the cooling towers include fugitive VOCs and gases that are stripped from the cooling water as the air and water come into contact. In an attempt to develop a conservative estimate of the emissions, the District used the emission factor for "uncontrolled sources." For these sources, AP-42 Table 5.1.2 estimates the release of 6 lb of VOCs per million gallons of circulated water. This emission factor carries a "D" rating, which means that it was developed from a small number of facilities, and there may be reason to suspect that the facilities do not represent a random or representative sample of the industry. In addition, this rating means that there may be evidence of variability within the source population. In this case the variability stems from the fact that 1) contaminants enter the cooling water system from leaks in heat exchangers and condensers, which are not predictable, and 2) the effectiveness of cooling tower controls is itself highly variable, depending on refinery configuration and existing maintenance practices.[20] It is this variability that renders the emission factor incapable of assuring continued compliance with the applicable standard over the lifetime of the permit. For all practical purposes, a single emission factor that was developed to represent long-term average emissions can not forecast the occurrence and size of leaks in a collection of heat exchangers and is therefore not predictive of compliance at any specific time.

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[20]AP 42, Fifth Edition, Volume I, Chapter 5

EPA has previously stated that annual reporting of NOx emissions using an equation that uses current production information, along with emission factors based on prior source tests, was insufficient to assure compliance with an emission unit's annual NOx standard. Even when presented with CEMs data which showed that actual NOx emissions for each of five years were consistently well below the standard, EPA found that a large margin of compliance alone was insufficient to demonstrate that the NOx emissions would not change over the life of the permit. *See In the Matter of Fort James Camas Mill*, Petition No. X-1999-1, at 17-18, (December 22, 2000).

Consistent with its findings in regard to the Fort James Camas Mill permit, EPA finds in this instance that the District failed to demonstrate that a one-time calculation is representative of ongoing compliance with the applicable requirement, especially considering the unpredictable nature of the emissions and the unreliability of the data used in the calculations. Therefore, under the authority of 40 C.F.R. § 70.6(a)(3)(i)(B), EPA is granting Petitioner's request to object to the Permit as the request pertains to cooling tower monitoring for District Regulation 8-2-301.

As an alternative to meeting the emission limitation cited in Section 8-2-301, facilities may operate in accordance with an exemption under Section 8-2-114, which states, "emissions from cooling towers...are exempt from this Rule, provided best modern practices are used." As a result, in lieu of adding periodic monitoring requirements adequate to assure compliance with the emission limit in Section 8-2-301, the District may require the Statement of Basis to include an applicability determination with respect to Section 8-2-114 and revise the Permit to reflect the use of best modern practices.

b. Regulation 6

BAAQMD SIP-approved Regulation 6 contains four particulate matter emissions standards for which Petitioner objects to the absence of monitoring. The District's decision for each standard is discussed separately below.

(1) Regulation 6-310

BAAQMD Regulation 6-310 limits the emissions from the cooling tower to 0.15 grains per dry standard cubic foot. Appendix G of the December 1, 2003 Statement of Basis sets forth the grounds for the District's decision that monitoring is not necessary to assure compliance with this requirement. Specifically, Appendix G provides calculations for the particulate matter emissions from the cooling tower and compares the expected emission rate to the regulatory limit. In calculating the emissions, the District used the PM-10 emission factor of 0.019 lb per 1000 gal circulating water from Table 13.4-1 of AP-42. The calculations show that the emissions are expected to be approximately 180 times lower than the emission limit. As a result, the District concluded that periodic monitoring is not necessary to assure compliance with the standard.

Petitioner alleges that these calculations do not adequately justify the District's decision because the AP-42 emission factor used carries an E rating, which means that it is of poor quality. As a result, Petitioner claims it is unlikely that the calculated emissions based on this factor are representative of the actual cooling tower emissions.

Petitioner is correct that the emission factor used by the District has an E rating. However, EPA disagrees that this rating alone is sufficient to conclude that the emission factor is not representative of the emissions from the cooling towers at the refinery. PM-10 emissions from cooling towers are generated when drift droplets evaporate and leave fine particulate matter formed by crystallization of dissolved solids. Particulate matter emission estimates can be obtained by multiplying the total liquid drift factor by the total dissolved solids (TDS) fraction in the circulating water. The AP-42 emission factor used by the District is based on a drift rate of 0.02% of the circulating water flow and a TDS content of approximately 12,000 ppm. With regard to both parameters, the District indicated in the December 1, 2003 Statement of Basis that the emission factor yielded a higher estimate of the emissions than the actual drift and TDS data that was supplied by the refineries. Therefore, EPA believes that the District's reliance on this emission factor does not demonstrate a deficiency in the Permit.[21]

EPA notes that the emission factor's poor rating is due in part to the variability associated with cooling tower drift and TDS data. As discussed in the Statement of Basis, the degree to which the emissions may vary was taken into account when considering the ability of the emission factor to demonstrate compliance with the emission limit. With respect to the drift, EPA believes that the emission factor is conservatively high compared to the 0.0005% drift rate that cooling towers are capable of achieving. Where TDS are concerned, AP-42 indicates that the dissolved solids content may range from 380 ppm to 91,000 ppm. While the emission factor represents a TDS concentration at the lower end of this spectrum, increases in the TDS content do not significantly increase the grain loading due to the large exhaust air flow rates exiting the cooling towers. Even assuming that the TDS concentration reached 91,000 ppm, the calculated emissions are still approximately 22 times lower than the regulatory limit.[22]

The District has provided sufficient evidence to demonstrate that the emissions will not vary by a degree that would cause an exceedance of the standard. Given the representative air flow and water circulation rates supplied by the refinery, compliance with the applicable requirement is expected under conditions (i.e., maximum TDS content) that represent a reasonable upper bound of the emissions. Therefore, EPA is denying Petitioner's request to object to the Permit as it pertains to periodic monitoring for Regulation 6-310.

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[21] Although EPA stated above in the discussion for Regulation 8-2 that AP-42 emission factors are generally not recommended for use in determining compliance with emission limits, there are exceptions. Data supplied by the refineries indicates that the AP-42 emission factor for PM-10 conservatively estimates the actual cooling tower emissions; as discussed further below, compliance with the limit is expected under conditions that represent a reasonable upper bound on the emissions.

[22] Again, this is assuming a drift rate of 0.02%.

(2) Regulation 6-31

BAAQMD Regulation 6-311 states that no person shall discharge particulate matter into the atmosphere at a rate in excess of that specified in Table 1 of the Rule for the corresponding process weight rate. Assuming the process weight rate for the cooling tower remains at or above the maximum level specified in Table 1, the rule establishes a maximum emission rate of 40 lb/hr. Unlike for Regulation 6-310, the District provided no justification for its decision to not require monitoring to assure compliance with this limit.

Using the PM-10 emission factor cited by the District in its calculations for Regulation 6-310, EPA estimates the emissions from S-29 to be in excess of 40 lb/hr. While the District stated that the emission factor represents a more conservative estimate of the emissions than the actual data provided by the refineries, it did not say how conservative the factor is. As a result, the District's monitoring decision is unsupported by the record and EPA finds that the Permit fails to meet the Part 70 standard that it contain periodic monitoring sufficient to yield reliable data that are representative of the source's compliance with its terms. *See* 40 C.F.R. § 70.6(a)(3)(i)(B). Therefore, EPA is granting Petitioner's request to object to the Permit. The Permit must include periodic monitoring adequate to assure compliance with BAAQMD Regulation 6-311. *See* 40 C.F.R. § 70.6(a)(3)(i)(B).

(3) Regulation 6-305

BAAQMD Regulation 6-305 states that, "a person shall not emit particles from any operation in sufficient number to cause annoyance to any other person...This Section 6-305 shall only apply if such particles fall on real property other than that of the person responsible for the emission." Nuisance requirements such as this may be enforced by EPA and the District at any time and there is no practical monitoring program that would enhance the ability of the permit to assure compliance with the applicable requirement. Therefore, EPA is denying Petitioner's request to object to the Permit as it pertains to monitoring for BAAQMD Regulation 6-305.

(4) Regulation 6-301

BAAQMD Regulation 6-301 states that a person shall not emit from any source for a period or periods aggregating more than three minutes in any hour, a visible emission which is as dark or darker than No. 1 on the Ringelmann Chart. While the Statement of Basis does not contain a justification for the District's decision that monitoring is not required for this standard, the District stated the following in response to public comments: "The District has prepared an analysis based on the AP-42 factors for particulate, which are very conservative, and has indeed determined that 'it is virtually impossible for cooling towers to exceed visible or grain loading limitations.' The calculations show that the particulate grain loading is a hundredth or less than the 0.15 gr/dscf standard due to the large airflows. When the grain loading is so low, visible emissions are not expected." 2003 CRTC at 59. EPA finds the District's assessment of the visible emissions to be reasonable and that Petitioner has not demonstrated otherwise. Therefore,

EPA is denying Petitioner's request to object to the Permit as it pertains to monitoring for BAAQMD Regulation 6-301.

4. Monitoring of Pressure Relief Valves

Petitioner alleges that the Permit must include additional monitoring to assure that all pressure relief valves at the facility are in compliance with the requirements of SIP-approved District Regulation 8-28 (Episodic Releases from Pressure Relief Valves). Petition at 36.

Regulation 8-28 requires that within 120 days of the first "release event" at a facility, the facility shall equip each pressure relief device of that source with a tamperproof tell-tale indicator that will show that a release has occurred since the last inspection. Regulation 8-28 also requires that a release event from a pressure relief device be reported to the APCO on the next working day following the venting. Petitioner states that neither the regulation nor the Permit includes any monitoring requirements to ensure that the first release event of a relief valve would ever be recorded, and that available tell-tale indicators or another objective monitoring method should be required for all pressure relief valves at the refinery, regardless of a valve's release event status.

First, EPA believes that the requirement that a facility report all release events to the District is adequate to ensure that the first release event would be recorded. EPA also notes that the refinery is subject to the title V requirement to certify compliance with all applicable requirements, including Regulation 8-28. See 40 C.F.R. § 70.6(c)(5). Thus, EPA does not have a basis to determine that the reporting requirement would not assure compliance with the applicable requirement at issue.

For the reasons stated above, EPA is denying the Petition on this issue.

5. Additional Monitoring Problems Identified by Petitioner

Petitioner claims that several sources with federally enforceable limits under BAAQMD Regulation 6 do not have monitoring adequate to assure compliance. The sources and limits at issue are discussed separately below.

Sulfur Storage Pit (S-157) / BAAQMD Regulations 6-301 and 6-310

BAAQMD Regulation 6 contains two particulate matter emissions standards for which Petitioner objects to the absence of monitoring. Specifically, BAAQMD Regulation 6-301 limits visible emissions to less than Ringelmann No. 1 and Regulation 6-310 limits the emissions to 0.15 gr. per dscf. Although Regulation 6 does not contain periodic monitoring requirements for either of the standards, the District declined to impose monitoring on this source.

The December 1, 2003 Statement of Basis provides the District's justification for not

requiring monitoring. Specifically, the District stated, "Source is capable of exceeding visible emissions or grain loading standard only during process upset. Under such circumstances, other indicators will alert the operator that something is wrong." *See* December 1, 2003 Statement of Basis, n. 4, at 23. If the source is not capable of exceeding the emission standards at times other than process upsets, it is reasonable that the District would not require regularly scheduled monitoring during normal operations. However, if, as stated by the District, S-157 is capable of exceeding the emission standards during process upsets, monitoring during those periods may be necessary. While the District stated that indicators would alert the operator that something is wrong in the event of a process upset, the District failed to demonstrate how the indicators or the operator's response would assure compliance with the applicable limits.

EPA finds in this case that the District's decision to not require monitoring is not adequately supported by the record. Therefore, EPA is granting Petitioner's request to object to the Permit as it pertains to monitoring for S-157. The District must re-open the Permit to include periodic monitoring that yields reliable data that are representative of the source's compliance with the permit or further explain in the Statement of Basis why monitoring is not needed.

b. Lime Slurry Tanks (S-174 and S-175) / BAAQMD Regulations 6-301, 6-310, and 6-311

BAAQMD Regulation 6 contains three standards for which Petitioner objects to the absence of monitoring. Regulation 6-311 sets a variable emission limit depending on the process weight rate and the requirements of 6-301 and 6-310 are described above. Regulation 6 does not contain periodic monitoring requirements for any of the standards and the District did not impose monitoring on these sources.

As in the previous case for source S-157, the Statement of Basis states that the District did not require monitoring to assure compliance with Regulations 6-301 and 6-310 because the "source is capable of exceeding visible emissions or grain loading standard only during process upset. Under such circumstances, other indicators will alert the operator that something is wrong." *See* December 1, 2003 Statement of Basis, n. 4, at 23. The Statement of Basis is silent on the District's monitoring decision for Regulation 6-311. Therefore, for the reasons stated above, EPA is granting Petitioner's request to object to the Permit as it pertains to monitoring for sources S-174 and S-175 to assure compliance with Regulations 6-301, 6-310, and 6-311. The District must reopen the Permit to include periodic monitoring or further explain in the Statement of Basis why monitoring is not needed.

c Diesel Backup Generators (S-240, S-241, and S-242) / BAAQMD Regulations 6-303.1 and 6-310

BAAQMD Regulation 6 contains two particulate matter emissions standards for which Petitioner objects to the absence of monitoring. The requirement of Regulation 6-310 is described above and Regulation 6-303.1 limits visible emissions to Ringelmann No. 2.

Regulation 6 does not contain periodic monitoring requirements for any of the standards and the District did not impose monitoring on these sources.

As a preliminary matter, EPA notes that opacity monitoring is generally not necessary for California sources firing on diesel fuel, based on the consideration that sources in California usually combust low-sulfur fuel.[23] Therefore, EPA is denying Petitioner's request to object to the Permit as it pertains to monitoring for Regulation 6-303.1.

With regard to Regulation 6-310, the December 1, 2003 Statement of Basis sets forth the basis for the District's decision that monitoring is not necessary. Specifically, the District states, "No monitoring [is] required because this source will be used for emergencies and reliability testing only." While it is true that Condition 18748 states these engines may only be operated to mitigate emergency conditions or for reliability-related activities (not to exceed 100 hours per year per engine), this condition is not federally enforceable. Absent federally enforceable restrictions on the hours of operation, the District's decision not to require monitoring is not adequately supported. Therefore, EPA is granting Petitioner's request to object to the Permit as it pertains to Regulation 6-310. The District must reopen the Permit to add periodic monitoring to assure compliance with the applicable requirement or further explain in the statement of basis why it is not necessary.

d. FCCU Catalyst Regenerator (S-5) and Fluid Coker (S-6) / BAAQMD Regulation 6-305

BAAQMD Regulation 6 contains one particulate matter emission standard for which Petitioner objects to the absence of monitoring. Regulation 6 does not contain periodic monitoring requirements for any of the standards and the District did not impose monitoring on these sources.

BAAQMD Regulation 6-305 states that, "a person shall not emit particles from any operation in sufficient number to cause annoyance to any other person...This Section 6-305 shall only apply if such particles fall on real property other than that of the person responsible for the emission." Petitioner has failed to establish that there is any practical monitoring program that would enhance the ability of the permit to assure compliance with the applicable requirement. Therefore, EPA is denying Petitioner's request to object to the Permit as it pertains to monitoring for BAAQMD Regulation 6-305.

e. Coke Transport, Catalyst Unloading, Carbon Black Storage, and Lime Silo (S-8, S-10, S-11, and S-12) / BAAQMD Regulation 6-311.

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[23]Per CAPCOA/CARB/EPA Region IX agreement. *See Approval of Title V Periodic Monitoring Recommendations*, June 24, 1999.

BAAQMD Regulation 6 contains one particulate matter emission standard for which Petitioner objects to the absence of monitoring. Specifically, BAAQMD Regulation 6-311 sets a variable emission limit depending on the process weight rate. Regulation 6 does not contain periodic monitoring requirements for any of the standards and the District did not impose monitoring on these sources.

For all four emission sources, the Permit requires monitoring with respect to Regulations 6-301 and 6-310 but not 6-311. Given this apparent conflict and the failure of the Statement of Basis to discuss the absence of monitoring, EPA finds that the District's decision in this case is not adequately supported by the record. Therefore, EPA is granting Petitioner's request as it pertains to monitoring for sources S-8, S-10, S-11, and S-12. The District must reopen the Permit to include periodic monitoring for Regulation 6-311 that yields reliable data that are representative of the source's compliance with the permit or explain in the Statement of Basis why monitoring is not needed.

H. Miscellaneous Permit Deficiencies

1 Missing Federal Requirements for Flares (Subpart CC)

Petitioner states that the District incorrectly determined that Valero flares are categorically exempt from 40 C.F.R. § 63 Subpart CC (NESHAP for Petroleum Refineries). Petitioner further states that "EPA disagreed with the District's claim that the flares qualify for a categorical exemption from Subpart CC when used as an alternative to the fuel gas system," and that the Valero Permit and Statement of Basis contain incorrect applicability determinations for flares S-18 and S-19, and that there is not enough information to determine applicability for flares S-16 and S-17. Petitioner states that for all flares subject to Subpart CC, the Permit must include all applicable requirements, including 40 C.F.R. § 63 Subpart A, by reference from 40 C.F.R. § 63 Subpart CC. Petitioner goes on to note that Petitioner has requested in past comments that the District determine the potential applicability of a number of federal regulations to the Valero flares, including 40 C.F.R. § 63 Subpart A, 40 C.F.R. § 63 Subpart CC, and 40 C.F.R. § 60 Subpart A, but that the District did not do so. Petitioner notes that given a lack of relevant information, Petitioner was unable to make an independent evaluation of applicability. Petitioner also alleges that EPA agreed with Petitioner that the District failed to provide sufficient information for the applicability determinations for flares S-16 and S-70 via Attachment 2 of EPA's October 8 comment letter. Finally, Petitioner states that EPA must object to the Permit until the District provides a sufficient analysis regarding the applicability of these federal rules to the Valero flares, and until the Permit contains all applicable requirements.

a. 40 C.F.R. Part 60, Subpart A

EPA finds that the applicability of 40 C.F.R. § 60 Subpart A is adequately addressed in the December 16, 2004 Statement of Basis for Valero. *See* Statement of Basis at 18 (Dec. 16, 2004). The District has included a table on page 18 of the December 16, 2004 Statement of Basis

indicating applicability of NSPS Subpart A to each of Valero's flares. Therefore, EPA is denying the Petition on this issue.

b. 40 C.F.R. Part 63, Subparts A and CC

40 C.F.R. Part 63, Subpart CC contains the Maximum Achievable Control Technology ("MACT") requirements for petroleum refineries. Under Subpart CC, the owner or operator of a Group 1 miscellaneous process vent, as defined in § 63.641, must reduce emissions of Hazardous Air Pollutants either by using a flare that meets the requirements of section 63.11 or by using another control device to reduce emissions by 98% or to a concentration of 20 ppmv. 40 C.F.R. § 63.643(a)(1). If a flare is used, a device capable of detecting the presence of a pilot flame is required. 40 C.F.R. § 63.644(a)(2).

The applicability provisions of Subpart CC are set forth in section 63.640, "Applicability and designation of affected source." Section 63.640(a) provides that Subpart CC applies to petroleum refining process units and related emissions points. The Applicability section further provides that affected sources subject to Subpart CC include emission points that are "miscellaneous process vents." 40 C.F.R. § 63.640(c)(1). The Applicability section also provides that affected sources do not include emission points that are routed to a fuel gas system. 40 C.F.R. § 63.640(d)(5). Gaseous streams routed to a fuel gas system are specifically excluded from the definition of "miscellaneous process vent," as are "episodic or nonroutine releases such as those associated with startup, shutdown, malfunction, maintenance, depressuring, and catalyst transfer operations." 40 C.F.R. § 63.641.

The District's Statement of Basis indicates that flares S-18 and S-19 are not subject to MACT Subpart CC pursuant to the exemption set forth in 40 C.F.R. § 63.640(d)(5). *See* December 16, 2004 Statement of Basis at 18. In the BAAQMD February 15, 2005 Letter, BAAQMD again asserted section 63.640(d)(5) as a basis for finding that the refinery's flares are not required to meet the standards in Subpart CC. EPA continues to believe that a detailed analysis of the configuration of the flare and compressor is required to exempt a flare on the basis that it is part of the fuel gas system.

BAAQMD's February 15, 2005 letter also provides an alternative rationale that gases vented to the refinery's flares are not within the definition of "miscellaneous process vents." Specifically, BAAQMD asserts that the flares are not miscellaneous process vents because they are used only to control "episodic and nonroutine" releases. As BAAQMD states:

> At all of the affected refineries, process gas collected by the gas recovery system are routed to flares only under two circumstances: (1) situations in which, due to process upset or equipment malfunctions, the gas pressure in the flare header rises to a level that breaks the water seal leading to the flares; or (2) situations in which, during process startups, shutdown, malfunction, maintenance, depressuring [sic], and catalyst transfer operations are, by definition, not miscellaneous process vents, and are not subject to

Subpart CC.

EPA agrees that a flare used only under the two circumstances described by the District would not be subject to Subpart CC because such flares are not used to control miscellaneous process vents as that term is defined in § 63.641. According to the BAAQMD February 15, 2005 Letter, BAAQMD intends to revise the Statement of Basis to further explain its rationale that Subpart CC does not apply to the Bay Area refinery flares, and intends to solicit public comment on its rationale.

Because the Permit and the Statement of Basis for Valero's flares S-18 and S-19 contain contradictory information with regard to the use of these flares, EPA agrees with Petitioner that the Statement of Basis is lacking a sufficient analysis regarding the applicability of MACT CC to these flares. Therefore, EPA is granting the Petition on this issue. BAAQMD must reopen the Permit to address applicability in the Statement of Basis, and, if necessary, to include the flare requirements of MACT Subpart CC in the Permit.

2. Basis for Tank Exemptions

Petitioner claims that the statement of basis and the Permit lack adequate information to support the proposed exempt status for numerous tanks identified in Table IIB of the Permit.

Table IIB of the Permit contains a list of 43 emission sources that have applicable requirements in Section IV of the Permit but that were determined by the District to be exempt from BAAQMD Regulation 2, which specifies the requirements for Authorities to Construct and Permits to Operate. Rule 1 of the regulation contains numerous exemptions that are based on a variety of physical and circumstantial grounds. EPA agrees with Petitioner that the Permit itself contains insufficient information to determine the basis for the exempt status of the equipment with respect to the exemptions in the rule. However, for most of the sources in Table IIB, Petitioner's claim that the Statement of Basis lacks the information is factually incorrect. Petitioner is referred to pages 94-99 of the Statement of Basis that accompanied the Permit issued by the District on December 1, 2003. Nonetheless, EPA is granting Petitioner's request on a limited basis for the reasons set forth below.

EPA's regulations state that the permitting authority must provide the Agency with a statement of basis that sets forth the legal and factual basis for the permit conditions. 40 C.F.R. § 70.7(a)(5). EPA has provided guidance on the content of an adequate statement of basis in a letter dated December 20, 2001, from Region V to the State of Ohio[24] and in a Notice of Deficiency (NOD) issued to the State of Texas.[25] These documents describe several key elements of a statement of basis, specifically noting that a statement of basis should address any

[24]The letter is available at: http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/sbguide.pdf.

[25]67 Fed. Reg. 732 (January 7, 2002).

federal regulatory applicability determinations. The Region V letter also recommends the inclusion of topical discussions on issues including but not limited to the basis for exemptions. Further, in response to a petition filed in regard to the title V permit for the Los Medanos Energy Center, EPA concluded that a statement of basis should document the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and EPA with a record of the applicability and technical issues surrounding the issuance of the permit. Such a record ought to contain a description of the origin or basis for each permit condition or exemption. *See, Los Medanos*, at 10.

As stated in *Los Medanos*, the failure of a permitting authority to meet the procedural requirement to provide a statement of basis does not necessarily demonstrate that the title V permit is substantively flawed. In reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, EPA considers whether the petitioner has demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. *See* CAA § 505(b)(2) (objection required "if the petitioner demonstrates . . . that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]"); *see also* 40 C.F.R. § 70.8(c)(1). Thus, where the record as a whole supports the terms and conditions of the permit, flaws in the statement of basis generally will not result in an objection. *See e.g., Doe Run*, at 24-25. In contrast, where flaws in the statement of basis resulted in, or may have resulted in, deficiencies in the title V permit, EPA will object to the issuance of the permit.

With regard to the Valero Permit, the majority of the sources listed in Table IIB are identified in the December 1, 2003 Statement of Basis along with a citation from Regulation 2 describing the basis of the exemption. For the sources that fall within this category, EPA finds that the permit record supports the District's determination for the exempt status of the equipment. However, in reviewing the December 16, 2004 Statement of Basis, EPA noted that three of the sources listed in Table IIB of the Permit are not included in the statement of basis with the corresponding citations for the exemptions.[26] For these sources, the failure of the record to support the terms of the Permit is adequate grounds for objecting to the Permit. Therefore, EPA is granting Petitioner's request to object to the Permit with respect to the listing of exempt sources in Table IIB but only as the request pertains to the three sources identified herein. Although EPA is not aware of other errors, the District should review the circumstances for all of the sources in Table IIB and the corresponding table in the statement of basis to further ensure that the Permit is accurate and that the record adequately supports the Permit. EPA also encourages the District to add the citation for each exemption to Table IIB as was done for the ConocoPhillips, Chevron, and Shell permits.

3 Public Participation

[26]Compare Table IIB of the Permit with the December 1, 2003 statement of basis for the LPG Truck Loading Rack, the TK-2710 Fresh Acid Tank, and the Cogeneration Plant Cooling Tower.

Petitioner argues that the District did not, in a timely fashion, make readily available to the public, compliance information that is relevant to evaluating whether a schedule of compliance is necessary. Specifically, Petitioner asserts that it had to make several requests under the California Public Records Act to obtain "relevant information concerning NOVs issued to the facility between 2001 and 2004" and the "2003 Annual Report and other compliance information, which is not readily available." Petitioner states that it took three weeks for the District to produce the information requested in Petitioner's "2003 PRA request." Petitioner contends that it expended significant resources to obtain the data and received the data so late in the process that they could not be sufficiently analyzed.

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, such as Petitioner's claims here that the District failed to comply with public participation requirements, EPA considers whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. *See* CAA, Section 505(b)(2)(objection required "if the petitioner demonstrates ... that the permit is not in compliance with the requirements of [the Act], including the requirements of the applicable [SIP].") EPA's title V regulations specifically identify the failure of a permitting authority to process a permit in accordance with procedures approved to meet the public participation provisions of 40 C.F.R. § 70.7(h) as grounds for an objection. 40 C.F.R. § 70.8(c)(3)(iii). District Regulations 2-6-412 and 2-6-419 implement the public participation requirements of 40 C.F.R. § 70.7(h). District Regulation 2-6-412, *Public Participation, Major Facility Review Permit Issuance*, approved by EPA as meeting the public participation provisions of 40 C.F.R. § 70.7(h), provides for notice and comment procedures that the District must follow when proposing to issue any major facility review permit. The public notice, which shall be published in a major newspaper in the area where the facility is located, shall identify, *inter alia*, information regarding the operation to be permitted, any proposed change in emissions, and a District source for further information. District Regulation 2-6-419, *Availability of Information*, requires the contents of the permit applications, compliance plans, emissions or compliance monitoring reports, and compliance certification reports to be available to the public, except for information entitled to confidential treatment.

Petitioner fails to demonstrate that the District did not process the permit in accordance with public participation requirements. The District duly published a notice regarding the proposed initial issuance of the permit. The notice, *inter alia*, referenced a contact for further information. The permit application, compliance plan, emissions or compliance monitoring reports, and compliance certification reports are available to the public through the District's Web site or in the District's files, which are open to the public during business hours. Petitioner admits that it ultimately obtained the compliance information it sought, albeit later than it wished. Petitioner fails to show that the perceived delay in receiving requested documents resulted in, or may have resulted in, a deficiency in the Permit. Therefore, EPA denies the Petition on this issue.

IV TREATMENT, IN THE ALTERNATIVE, AS A PETITION TO REOPEN

As explained in the Procedural Background section of this Order, EPA received and dismissed a prior petition ("2003 OCE Petition") from this Petitioner on a previous version of the Permit at issue in this Petition. EPA's response in this Order to issues raised in this Petition that were also included in the 2003 OCE Petition also constitutes the Agency's response to the 2003 Petition. Furthermore, EPA considers the Petition validly submitted under CAA section 505(b)(2). However, if the Petition should be deemed to be invalid under that provision, EPA also considers, in the alternative, the Petition and Order to be a Petition to Reopen the Permit and a response to a Petition to Reopen the Permit, respectively.

V CONCLUSION

For the reasons set forth above, and pursuant to section 505(b)(2) of the Clean Air Act, I deny in part and grant in part OCE's Petition requesting that the Administrator object to the Valero Permit. This decision is based on a thorough review of the draft permit, the final Permit issued December 16, 2004, and other documents pertaining to the issuance of the Permit.

MAR 1 5 2005

Date

Stephen L. Johnson
Acting Administrator

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of Valero Refining Co Benicia, California Facility	Petition No. IX-2004-07
Major Facility Review Permit Facility No. B2626 Issued by the Bay Area Air Quality Management District	ORDER RESPONDING TO PETITIONER'S REQUEST THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF A STATE OPERATING PERMIT

ORDER DENYING IN PART AND GRANTING IN PART A PETITION FOR OBJECTION TO PERMIT

On December 7, 2004, the Environmental Protection Agency ("EPA") received a petition ("Petition") from Our Children's Earth Foundation ("OCE" or "Petitioner") requesting that the EPA Administrator object to the issuance of a state operating permit from the Bay Area Air Quality Management District ("BAAQMD" or "District") to Valero Refining Co. to operate its petroleum refinery located in Benicia, California ("Permit"), pursuant to title V of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7661-7661f, CAA §§ 501-507, EPA's implementing regulations in 40 C.F.R. Part 70 ("Part 70"), and the District's approved Part 70 program. *See* 66 Fed. Reg. 63503 (Dec. 7, 2001).

Petitioner requested EPA object to the Permit on several grounds. In particular, Petitioner alleged that the Permit failed to properly require compliance with applicable requirements pertaining to, *inter alia*, flares, cooling towers, process units, electrostatic precipitators, and other waste streams and units. Petitioner identified several alleged flaws in the Permit application and issuance, including a deficient Statement of Basis. Finally, Petitioners alleged that the permit impermissibly lacked a compliance schedule and failed to include monitoring for several applicable requirements.

EPA has now fully reviewed the Petitioner's allegations pursuant to the standard set forth in section 505(b)(2) of the Act, which places the burden on the petitioner to "demonstrate[] to the Administrator that the permit is not in compliance" with the applicable requirements of the Act or the requirements of part 70, *see also* 40 C.F.R. § 70.8(c)(1), and I hereby respond to them by this Order. In considering the allegations, EPA reviewed the Permit and related materials and information provided by the Petitioner in the Petition.[1] Based on this review, I partially deny and

[1]On March 7, 2005 EPA received a lengthy (over 250 pages, including appendices), detailed submission from Valero Refining Company regarding this Petition. Due to the fact that Valero Refining Company made its submission very shortly before EPA's settlement agreement deadline for responding to the Petition and the size of the

partially grant the Petitioner's request that I object to issuance of the Permit for the reasons described below.

I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. In 1995, EPA granted interim approval to the title V operating permit program submitted by BAAQMD. 60 Fed. Reg. 32606 (June 23, 1995); 40 C.F.R. Part 70, Appendix A. Effective November 30, 2001, EPA granted full approval to BAAQMD's title V operating permit program. 66 Fed. Reg. 63503 (Dec. 7, 2001.).

Major stationary sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes applicable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. *See* CAA §§ 502(a) and 504(a). The title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as "applicable requirements"), but does require permits to contain monitoring, recordkeeping, reporting, and other compliance requirements when not adequately required by existing applicable requirements to assure compliance by sources with existing applicable emission control requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, EPA, permitting authorities, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements. Thus, the title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under section 505(a) of the Act and 40 C.F.R. § 70.8(a), permitting authorities are required to submit all operating permits proposed pursuant to title V to EPA for review. If EPA determines that a permit is not in compliance with applicable requirements or the requirements of 40 C.F.R. Part 70, EPA will object to the permit. If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act and 40 C.F.R. § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. Section 505(b)(2) of the Act requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of Part 70 and the applicable implementation plan. *See*, 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003). Part 70 requires that a petition must be "based only on objections to the

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submission, EPA was not able to review the submission itself, nor was it able to provide the Petitioner an opportunity to respond to the submission. Although the Agency previously has considered submissions from permittees in some instances where EPA was able to fully review the submission and provide the petitioners with a chance to review and respond to the submissions, time did not allow for either condition here. Therefore, EPA did not consider Valero Refining Company's submission when responding to the Petition via this Order.

permit that were raised with reasonable specificity during the public comment period. . ., unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period." 40 C.F.R. § 70.8(d). A petition for objection does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period and before receipt of an objection. If EPA objects to a permit in response to a petition and the permit has been issued, the permitting authority or EPA will modify, terminate, or revoke and reissue such a permit using the procedures in 40 C.F.R. §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

II. PROCEDURAL BACKGROUND

A. Permitting Chronology

BAAQMD held its first public comment period for the Valero permit, as well as BAAQMD's other title V refinery permits from June through September 2002.[2] BAAQMD held a public hearing regarding the refinery permits on July 29, 2002. From August 5 to September 22, 2003, BAAQMD held a second public comment period for the permits. EPA's 45-day review of BAAQMD's initial proposed permits ran concurrently with this second public comment period, from August 13 to September 26, 2003. EPA did not object to any of the proposed permits under CAA section 505(b)(1). The deadline for submitting CAA section 505(b)(2) petitions was November 25, 2003. EPA received petitions regarding the Valero Permit from Valero Refining Company and from Our Children's Earth Foundation. EPA also received section 505(b)(2) petitions regarding three of BAAQMD's other refinery permits.

On December 1, 2003, BAAQMD issued its initial title V permits for the Bay Area refineries, including the Valero facility. On December 12, 2003, EPA informed the District of EPA's finding that cause existed to reopen the refinery permits because the District had not submitted proposed permits to EPA as required by title V, Part 70 and BAAQMD's approved title V program. *See* Letter from Deborah Jordan, Director, Air Division, EPA Region 9 to Jack Broadbent, Air Pollution Control Officer, Bay Area Air Quality Management District, dated December 12, 2003. EPA's finding was based on the fact that the District had substantially revised the permits in response to public comments without re-submitting proposed permits to EPA for another 45-day review. As a result of the reopening, EPA required BAAQMD to submit to EPA new proposed permits allowing EPA an additional 45-day review period and an opportunity to object to a permit if it failed to meet the standards set forth in section 505(b)(1).

On December 19, 2003, EPA dismissed all of the section 505(b)(2) petitions seeking objections to the refinery permits as unripe because of the just-initiated reopening process. *See e.g.,* Letters from Deborah Jordan, Director, Air Division, EPA Region 9, to John T. Hansen,

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[2]There are a total of five petroleum refineries in the Bay Area: Chevron Products Company's Richmond refinery, ConocoPhillips Company's San Francisco Refinery in Rodeo, Shell Oil Company's Martinez Refinery, Tesoro Refining and Marketing Company's Martinez refinery, and Valero Refining Company's Benicia facility.

Pillsbury Winthrop, LLP (representing Valero) and to Marcelin E. Keever, Environmental Law and Justice Clinic, Golden Gate University School of Law (representing Our Children's Earth Foundation and other groups) dated December 19, 2003. EPA also stated that the reopening process would allow the public an opportunity to submit new section 505(b)(2) petitions after the reopening was completed. In February 2004, three groups filed challenges in the United States Court of Appeals for the Ninth Circuit regarding EPA's dismissal of their section 505(b)(2) petitions. The parties resolved this litigation by a settlement agreement under which EPA agreed to respond to new petitions (i.e., those submitted after EPA's receipt of BAAQMD's re-proposed permits, such as this Petition) from the litigants by March 15, 2005. *See* 69 Fed. Reg. 46536 (Aug. 3, 2004).

BAAQMD submitted a new proposed permit for Valero to EPA on August 26, 2004; EPA's 45-day review period ended on October 10, 2004. EPA objected to the Valero Permit under CAA section 505(b)(1) on one issue: the District's failure to require adequate monitoring, or a design review, of thermal oxidizers subject to EPA's New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.

B. Timeliness of Petition

The deadline for filing section 505(b)(2) petitions expired on December 9, 2004. EPA finds that the Petition was submitted on December 7, 2004, which is within the 60-day time frame established by the Act and Part 70. EPA therefore finds that the Petition is timely.

III. ISSUES RAISED BY PETITIONER

A. Compliance with Applicable Requirements

Petitioner alleges that EPA must object to the Permit on the basis of alleged deficiencies Petitioner claims EPA identified in correspondence with the District dated July 28, August 2, and October 8, 2004. Petitioner alleges that EPA and BAAQMD engaged in a procedure that allowed issuance of a deficient Permit. Petition at 6-10. EPA disagrees with Petitioner that it was required to object to the Permit under section 505(b)(1) or that it followed an inappropriate procedure during its 45-day review period.

As a threshold matter, EPA notes that Petitioner's claims addressed in this section are limited to a mere paraphrasing of comments EPA provided to the District in the above-referenced correspondence. Petitioner did not include in the Petition any additional facts or legal analysis to support its claims that EPA should object to the Permit. Section 505(b)(2) of the Act places the burden on the petitioner to "demonstrate[] to the Administrator that the permit is not in compliance" with the applicable requirements of the Act or the requirements of part 70. *See also* 40 C.F.R. § 70.8(c)(1); *NYPIRG*, 321 F.3d at 333 n.11. Furthermore, in reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, EPA considers whether the petitioner has

demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. *See* CAA § 505(b)(2); *see also* 40 C.F.R. § 70.8(c)(1); *In the Matter of Los Medanos Energy Center*, at 11 (May 24, 2004) ("*Los Medanos*"); *In the Matter of Doe Run Company Buick Mill and Mine*, Petition No. VII-1999-001, at 24-25 (July 31, 2002) ("*Doe Run*"). Petitioner bears the burden of demonstrating a deficiency in the permit whether the alleged flaw was first identified by Petitioner or by EPA. *See* 42 U.S.C. § 7661d(b)(2). Because this section of the Petition is little more than a summary of EPA's comments on the Permit, with no additional information or analysis, it does not demonstrate that there is a deficiency in the Permit.

1. EPA's July 28 and August 2, 2004 Correspondence

Petitioner overstates the legal significance of EPA's correspondence to the District dated July 28 and August 2, 2004. This correspondence, which took place between EPA and the District during the permitting process but before BAAQMD submitted the proposed Permit to EPA for review, was clearly identified as "issues for discussion" and did not have any formal or legal effect. Nonetheless, EPA is addressing the substantive aspects of Petitioner's allegation regarding the applicability and enforceability of provisions relating to 40 C.F.R. § 60.104(a)(1) in Section III.G.1.

2. Attachment 2 of EPA's October 8, 2004 Letter

EPA's letter to the District dated October 8, 2004 contained the Agency's formal position with respect to the proposed Permit. *See* Letter from Deborah Jordan, Director, Air Division, EPA Region 9 to Jack Broadbent, Air Pollution Control Officer, BAAQMD, dated October 8, 2004 ("EPA October 8, 2004 Letter"). Attachment 2 of the letter requested the District to review whether the following regulations and requirements were appropriately handled in the Permit:

- Applicability of 40 C.F.R. Part 63, Subpart CC to flares
  Applicability of Regulation 8-2 to cooling towers
- Applicability of NSPS Subpart QQQ to new process units
  Applicability of NESHAP Subpart FF to benzene waste streams according to annual average water content
  Compliance with NESHAP Subpart FF for benzene waste streams
- Parametric monitoring for electrostatic precipitators

EPA and the District agreed that this review would be completed by February 15, 2005 and that the District would solicit public comment for any necessary changes by April 15, 2005. Contrary to Petitioner's allegation, EPA's approach to addressing these uncertainties was appropriate. The Agency pressed the District to re-analyze these issues and obtained the District's agreement to follow a schedule to bring these issues to closure. EPA notes again that the Petition itself provides no additional factual or legal analysis that would resolve these applicability issues and demonstrate that the Permit is indeed lacking an applicable requirement.

Progress in resolving these issues is attributable solely to the mechanism set in place by EPA and the District.

EPA has received the results of BAAQMD's review, *see,* Letter from Jack Broadbent, Air Pollution Control Officer, BAAQMD, to Deborah Jordan, Director, Air Division, EPA Region 9, dated February 15, 2005 ("BAAQMD February 15, 2005 Letter"), and is making the following findings.

a. Applicability of 40 C.F.R. Part 63, Subpart CC to Flares

This issue is addressed in Section III.H.

b Cooling Tower Monitoring

This issue is addressed at Section III.G.3.

Applicability of NSPS Subpart QQQ to New Process Units

Petitioner claims EPA determined that the Statement of Basis failed to discuss the applicability of NSPS Subpart QQQ for two new process units at the facility.

In an applicability determination for Valero's sewer collection system (S-161), the District made a general reference to two new process units that had been constructed since 1987, the date after which constructed, modified, or reconstructed sources became subject to New Source Performance Standard ("NSPS") Subpart QQQ. The District further indicated that process wastewater from these units is hard-piped to an enclosed system. However, the District did not discuss the applicability of Subpart QQQ for these units or the associated piping. As a result, it was not clear whether applicable requirements were omitted from the proposed Permit.

In response to EPA's request for more information on this matter, the District stated in a letter dated February 15, 2005[3] that the process units are each served by separate storm water and sewer systems. The District has concluded that the storm water system is exempt from Subpart QQQ pursuant to 40 C.F.R. 60.692-1(d)(1). However, with regard to the sewer system, the District stated the following:

> The second sewer system is the process drain system that contains oily water waste streams. This system is "hard-piped" to the slop oil system where the wastewater is separated and sent to the sour water stripper. From the sour water stripper, the wastewater [is] sent directly to secondary treatment in the WWTP where it is processed in the Biox units.

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[3]*See* Letter from Jack Broadbent, Executive Office/APCO, Bay Area Air Quality Management District to Deborah Jordan, Director, Air Division, EPA Region 9.

The District will review the details of the new process drain system and determine the applicable standards. A preliminary review indicates that, since this system is hard-piped with no emissions, the new process drain system may have been included in the slop oil system, specifically S-81 and/or S104. If this is the case, Table IV-J33 will be reviewed and updated, as necessary, to include the requirements of the new process drain system.

The District's response indicates that the Permit may be deficient because it may lack applicable requirements. Therefore, EPA is granting Petitioner's request to object to the Permit. The District must determine what requirements apply to the new process drain system and add any applicable requirements to the Permit as appropriate.

d. Management of Non-aqueous Benzene Waste Streams Pursuant to 40 C.F.R. Part 61, Subpart FF

Petitioner claims that EPA identified an incorrect applicability determination regarding benzene waste streams and NESHAP Subpart FF. Referencing previous EPA comments, Petitioner notes that the restriction contained in 40 C.F.R. § 61.342(e)(1) was ignored by the District in the applicability determination it conducted for the facility.

The Statement of Basis for the proposed Permit included an applicability determination for Valero's Sewer Pipeline and Process Drains, which stated the following:

> Valero complies with FF through 61.342(e)(2)(i), which allows the facility 6 Mg/yr of uncontrolled benzene waste. Thus, facilities are allowed to choose whether the benzene waste streams are controlled or uncontrolled as long as the uncontrolled stream quantities total less than 6 Mg/yr...Because the sewer and process drains are uncontrolled, they are not subject to 61.346, the standards for individual drain systems.

In its October 8, 2004 letter, EPA raised concerns over this applicability determination due to the District's failure to discuss the control requirements in 40 C.F.R. § 61.342(e)(1). Under the chosen compliance option, only wastes that have an average water content of 10% or greater may go uncontrolled (*see* 40 C.F.R. § 61.342(e)(2)) and it was not clear from the applicability determination that the emission sources met this requirement. In response to EPA's request for more information on this matter, the BAAQMD stated in its February 15, 2005 letter, "In the Revision 2 process, the District will determine which waste streams at the refineries are non-aqueous benzene waste streams. Section 61.342(e)(1) will be added to the source-specific tables for any source handling such waste. The District has sent letters to the refineries requesting the necessary information."

The District's response indicates that the Permit may be deficient because it may lack an applicable requirement, specifically Section 61.342(e)(1). Therefore, EPA is granting Petitioner's request to object to the Permit. The District must reopen the Permit to add Section

61.342(e)(1) to the source-specific tables for all sources that handle non-aqueous benzene waste streams or explain in the Statement of Basis why Section 61.342(e)(1) does not apply.

e. 40 C.F.R. Part 61, Subpart FF - 6BQ Compliance Option

Referencing EPA's October 8, 2004 letter, Petitioner claims that EPA identified an incorrect applicability determination regarding the 6BQ compliance option for benzene waste streams under 40 C.F.R. § 61.342(e). Petitioner claims that this should have resulted in an objection by EPA.

The EPA comment referenced by Petitioner is issue #12 in Attachment 2 of the Agency's October 8, 2004 letter to the BAAQMD. In that portion of its letter, EPA identified incorrect statements regarding the wastes that are subject to the 6 Mg/yr limit under 40 C.F.R. § 61.342(e)(2)(i). Specifically, the District stated that facilities are allowed to choose whether the benzene waste streams are controlled or uncontrolled as long as the uncontrolled stream quantities total less than 6 Mg/yr. In actuality, the 6 Mg/yr limit applies to all aqueous benzene wastes (both controlled and uncontrolled).

The fundamental issues raised by the EPA October 8, 2004 Letter were 1) whether or not the refineries are in compliance with the requirements of the benzene waste operations NESHAP, and 2) the need to remove the incorrect language from the Statement of Basis. The first issue is a matter of enforcement and does not necessarily reflect a flaw in the Permit. Absent information indicating that the refinery is actually out of compliance with the NESHAP, there is no basis for an objection by EPA. The second issue has already been corrected by the District. In response to EPA's comment, the District revised the Statement of Basis to state that the 6 Mg/yr limit applies to the benzene quantity in the total aqueous waste stream. *See* December 16, 2004 Statement of Basis at 26. Therefore, EPA is denying Petitioner's request to object to the Permit. However, in responding to this Petition, EPA identified additional incorrect language in the Permit. Specifically, Table VII-Refinery states, "Uncontrolled benzene <6 megagrams/year." *See* Permit at 476. As discussed above, this is clearly inconsistent with 40 C.F.R. § 61.342(e)(2). In addition, Table IV-Refinery contains a similar entry that states, "Standards: General; [Uncontrolled] 61.342(e)(2) Waste shall not contain more than 6.0 Mg/yr benzene." *See* Permit at 51. As a result, under a separate process, EPA is reopening the Permit pursuant to its authority under 40 C.F.R. § 70.7(g) to require that the District fix this incorrect language.

f. Parametric Monitoring for Electrostatic Precipitators

Petitioner claims EPA found that the Permit contains deficient particulate monitoring for sources that are abated by electrostatic precipitators (ESPs) and that are subject to limits under SIP-approved District Regulations 6-310 and 6-311. Petitioner requests that EPA object to the Permit to require appropriate monitoring.

BAAQMD Regulation 6-310 limits particulate matter emissions to 0.15 grains per dry

standard cubic foot, and Regulation 6-311 contains a variable limit based on a source's process weight rate. Because Regulation 6 does not contain monitoring provisions, the District relied on its periodic monitoring authority to impose monitoring requirements on sources S-5, S-6, and S-10 to ensure compliance with these standards. See 40 C.F.R. § 70.6(a)(3)(i)(B); BAAQMD Reg. 6-503; BAAQMD Manual of Procedures, Vol. III, Section 4.6. For sources S-5 and S-6, the Permit requires annual source tests for both emission limits. For S-10, the Permit requires an annual source test to demonstrate compliance with Regulation 6-310 but no monitoring is required for Regulation 6-311.

With regard to monitoring for Regulation 6-311 for source S-10, the Permit is inconsistent with the Statement of Basis. The final Statement of Basis indicates that Condition 19466, Part 9 should read, "The Permit Holder shall perform an annual source test on Sources S-5, S-6, S-8, S-10, S-11, S-12, S-176, S-232, S-233 and S-237 to demonstrate compliance with Regulation 6-311 (PM mass emissions rate not to exceed 4.10P0.67 lb/hr)." *See* December 16, 2004 Statement of Basis at 84. However, Part 9 of Condition 19466 in the Permit states that the monitoring requirement only applies to S-5 and S-6. December 16, 2004 Permit at 464. In addition, Table VII-B1 states that monitoring is not required. Therefore, EPA is granting Petitioner's request to object to the Permit as it pertains to monitoring S-10 for compliance with Regulation 6-311. The District must reopen the Permit to add monitoring requirements adequate to assure compliance with the emission limit or explain in the Statement of Basis why it is not needed.

Regarding the annual source tests for sources S-5, S-6, and S-10, EPA believes that an annual testing requirement is inadequate in the absence of additional parametric monitoring because proper operation and maintenance of the ESPs is necessary in order to achieve compliance with the emission limits. In the BAAQMD February 15, 2005 Letter, the District stated that it intends to "propose a permit condition requiring the operator to conduct an initial compliance demonstration that will establish a correlation between opacity and particulate emissions." Thus, EPA concludes the Permit does not meet the Part 70 standard that it contain periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance. *See* 40 C.F.R. § 70.6(a)(3)(i)(B). Therefore, EPA is granting Petitioner's request to object to the Permit. At a minimum, the Permit must contain monitoring which yields data that are representative of the source's compliance with its permit terms and conditions.

3. Attachment 3 of EPA's October 8, 2004 Letter

Attachment 3 of EPA's October 8, 2004 Letter memorialized the District's agreement to address two issues related to the Valero Permit. One issue pertains to applicability determinations for support facilities. EPA does not have adequate information demonstrating that the Valero facility has support facilities, nor has Petitioner provided any such information. EPA therefore finds no basis to object to the Permit and denies the Petition as to this issue.

The second issue pertains to the removal of a permit shield from BAAQMD Regulation 8-2. EPA has reviewed the most recent version of the Permit and determined that the shield was removed. Therefore, EPA is denying Petitioner's request to object to the permit as this issue is moot.

B. Permit Application

Applicable Requirements

Petitioner alleges that EPA must object to the Permit because it contains unresolved applicability determinations due to "deficiencies in the application and permit process" as identified in Attachment 2 to EPA's October 8, 2004 letter to the District.

During EPA's review of the Permit, BAAQMD asserted that, notwithstanding any alleged deficiencies in the application and permit process, the Permit sufficiently addressed these items or the requirements were not applicable. EPA requested that the District review some of the determinations of adequacy and non-applicability that it had already made. EPA believes that this process has resulted in improved applicability determinations. Petitioners have failed to demonstrate that such a generalized allegation of "deficiencies in the application and permit process" actually resulted in or may have resulted in a flaw in the Permit. Therefore, EPA denies the Petition on this basis.

2. Identification of Insignificant Sources

Petitioner contends that the permit application failed to list insignificant sources, resulting in a "lack of information ... [that] inhibits meaningful public review of the Title V permit." Petitioner further contends that, contrary to District permit regulations, the application failed to include a list of all emission units, including exempt and insignificant sources and activities, and failed to include emissions calculations for each significant source or activity. Petitioner lastly alleges that the application lacked an emissions inventory for sources not in operation during 1993.

Under Part 70, applications may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate a required fee amount. 40 C.F.R. § 70.5(c). Emission calculations in support of the above information are required. 40 C.F.R. § 70.5(c)(3)(viii). An application must also include a list of insignificant activities that are exempted because of size or production rate. 40 C.F.R. § 70.5(c).

District Regulation 2-6-405.4 requires applications for title V permits to identify and describe "each permitted source at the facility" and "each source or other activity that is exempt from the requirement to obtain a permit . . ." EPA's Part 70 regulations, which prescribe the minimum elements for approvable state title V programs, require that applications include a list of insignificant sources that are exempted on the basis of size or production rate. 40 C.F.R.

§ 70.5(c). EPA's regulations have no specific requirement for the submission of emission calculations to demonstrate why an insignificant source was included in the list.

Petitioner makes no claim that the Permit inappropriately exempts insignificant sources from any applicable requirements or that the Permit omits any applicable requirements. Similarly, Petitioner makes no claim that the inclusion of emission calculations in the application would have resulted in a different permit. Because Petitioner failed to demonstrate that the alleged flaw in the permitting process resulted in, or may have resulted in, a deficiency in the permit, EPA is denying the Petition on this ground.

EPA also denies Petitioner's claim because Petitioner fails to substantiate its generalized contention that the Permit is flawed. The Statement of Basis unambiguously explains that Section III of the Permit, *Generally Applicable Requirements*, applies to all sources at the facility, including insignificant sources:

> This section of the permit lists requirements that generally apply to all sources at a facility including insignificant sources and portable equipment that may not require a District permit....[S]tandards that apply to insignificant or unpermitted sources at a facility (e.g., refrigeration units that use more than 50 pounds of an ozone-depleting compound), are placed in this section.

Thus, all insignificant sources subject to applicable requirements are properly covered by the Permit.

Petitioner also fails to explain how meaningful public review of the Permit was "inhibited" by the alleged lack of a list of insignificant sources from the permit application.[4] We find no permit deficiency otherwise related to missing insignificant source information in the Permit application.

In addition, Petitioner fails to point to any defect in the Permit as a consequence of any missing significant emissions calculations in the permit application. The Statement of Basis for Section IV of the Permit states, "This section of the Permit lists the applicable requirements that apply to permitted or significant sources." Therefore, all significant sources and activities are properly covered by the Permit.

With respect to a missing emissions inventory for sources not in operation during 1993, Petitioner again fails to point to any resultant flaw in the Permit. These sources are appropriately addressed in the Permit.

For the foregoing reasons, EPA is denying the Petition on these issues.

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[4] In another part of the Petition, addressed below, Petitioner argues that the District's delay in providing requested information violated the District's public participation procedures approved to meet 40 C.F.R. § 70.7.

3. Identification of Non-Compliance

Petitioner argues that the District should have compelled the refinery to identify non-compliance in the application and provide supplemental information regarding non-compliance during the application process prior to issuance of the final permit on December 1, 2003. In support, Petitioner cites the section of its Petition (III.D.) alleging that the refinery failed to properly update its compliance certification.

Title V regulations do not require an applicant to supplement its application with information regarding non-compliance,[5] unless the applicant has knowledge of an incorrect application or of information missing from an application. Pursuant to 40 C.F.R. § 70.5(c)(8)(i) and (iii)(C), a standard application form for a title V permit must contain, *inter alia*, a compliance plan that describes the compliance status of each source with respect to all applicable requirements and a schedule of compliance for sources that are not in compliance with all applicable requirements at the time the permit issues. Section 70.5(b), *Duty to supplement or correct application*, provides that any applicant who fails to submit any relevant facts, or who has submitted incorrect information, in a permit application, shall, upon becoming aware of such failure or incorrect submission, promptly submit such supplemental or corrected information. In addition, Section 70.5(c)(5) requires the application to include "[o]ther specific information that may be necessary to implement and enforce other applicable requirements ... or to determine the applicability of such requirements."

Petitioner does not show that the refinery had failed to submit any relevant facts, or had submitted incorrect information, in its 1996 initial permit application. Consequently, the duty to supplement or correct the permit application described at 40 C.F.R. § 70.5(b) has not been triggered in this case.

Moreover, EPA disagrees that the requirement of 40 C.F.R. § 70.5(c)(5) requires the refinery to update compliance information in this case. The District is apprised of all new information arising after submittal of the initial application – such as NOVs, episodes and complaints – that may bear on the implementation, enforcement and/or applicability of applicable requirements. In fact, the District has an inspector assigned to the plant to assess compliance at least on a weekly basis. Therefore, it is not necessary to update the application with such information, as it is already in the possession of the District. Petitioner has failed to demonstrate that the alleged failure to update compliance information in the application resulted in, or may have resulted in, a deficiency in the Permit. For the foregoing reasons, EPA denies the Petition on this issue.

C. Assurance of Compliance with All Applicable Requirements Pursuant to the Act, Part 70 and BAAQMD Regulations

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[5] As discussed *infra*, title V regulations also do not require permit applicants to update their compliance certifications pending permit issuance.

1 Compliance Schedule

In essence, Petitioner claims that the District's consideration of the facility's compliance history during the title V permitting process was flawed because the District decided not to include a compliance schedule in the Permit despite a number of NOVs and other indications, in Petitioner's view, of compliance problems, and the District did not explain why a compliance schedule is not necessary. Specifically, Petitioner alleges that EPA must object to the Permit because the "District ignored evidence of recurring or ongoing compliance problems at the facility, instead relying on limited review of outdated records, to conclude that a compliance schedule is unnecessary." Petition at 11-19. Petitioner further alleges that a compliance schedule is necessary to address NOVs issued to the plant (including many that are still pending)[6], one-time episodes[7] reported by the plant, recurring violations and episodes at certain emission units, complaints filed with the District, and the lack of evidence that the violations have been resolved. The relief sought by Petitioner is for the District to include "a compliance schedule in the Permit, or explain why one was not necessary." *Id.* Petitioner additionally charges that, due to the facility's poor compliance history, additional monitoring, recordkeeping and reporting requirements are warranted to assure compliance with all applicable requirements. *Id.*

Section 70.6(c)(3) requires title V permits to include a schedule of compliance consistent with Section 70.5(c)(8). Section 70.5(c)(8) prescribes the requirements for compliance schedules to be submitted as part of a permit application. For sources that are not in compliance with applicable requirements at the time of permit issuance, compliance schedules must include "a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance." 40 C.F.R. § 70.5(c)(8)(iii)(C). The compliance schedule should "resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject." *Id.*

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, such as Petitioner's claims that the District improperly considered the facility's compliance history, EPA considers whether a Petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. See CAA § 505(b)(2) (requiring an objection "if the petitioner demonstrates ... that the permit is not in compliance with the requirements of this Act...."). In Petitioner's view, the deficiency that resulted here is the lack of a compliance schedule. For the reasons explained below, EPA grants

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[6]BAAQMD Regulation 1:401 provides for the issuance of NOVs: "Violation Notice: A notice of violation or citation shall be issued by the District for all violations of District regulations and shall be delivered to persons alleged to be in violation of District regulations. The notice shall identify the nature of the violation, the rule or regulation violated, and the date or dates on which said violation occurred."

[7]According to BAAQMD, "episodes" are "reportable events, but are not necessarily violations." Letter from Adan Schwartz, Senior Assistant Counsel, BAAQMD to Gerardo Rios, EPA Region IX, dated January 31, 2005.

the Petition to require the District to address in the Permit's Statement of Basis the NOVs that the District has issued to the facility and, in particular, NOVs that have not been resolved because they may evidence noncompliance at the time of permit issuance. EPA denies the Petition as to Petitioner's other compliance schedule issues.

a. Notices of Violation

In connection with its claim that the Permit is deficient because it lacks a compliance schedule, Petitioner states that the District issued 85 NOVs to Valero between 2001 and 2004 and 51 NOVs in 2003 and 2004. Petitioner highlights that, as of October 22, 2004, all 51 NOVs issued in 2003 and 2004 were unresolved and still "pending." Petition at 14-15. To support its claims, Petitioner attached to the Petition various District compliance reports and summaries, including a list of NOVs issued between January 1, 2003 and October 1, 2004. Thus, Petitioner essentially claims that the District's consideration of these NOVs during the title V permitting process was flawed, because the District did not include a compliance schedule in the Permit and did not explain why a compliance schedule is not necessary.

As noted above, EPA's Part 70 regulations require a compliance schedule for "applicable requirements for sources that are not in compliance with those requirements at the time of permit issuance." 40 C.F.R. §§ 70.6(c)(3), 70.5(c)(8)(iii)(C). Consistent with these requirements, EPA has stated that a compliance schedule is not necessary if a violation is intermittent, not on-going, and has been corrected before the permit is issued. *See In the Matter of New York Organic Fertilizer Company*, Petition Number II-2002-12 at 47-49 (May 24, 2004). EPA has also stated that the permitting authority has discretion not to include in the permit a compliance schedule where there is a pending enforcement action that is expected to result in a compliance schedule (i.e., through a consent order or court adjudication) for which the permit will be eventually reopened. *See In the Matter of Huntley Generating Station*, Petition Number II-2002-01, at 4-5 (July 31, 2003); *see also In the Matter of Dunkirk Power, LLC*, Petition Number II-2002-02, at 4-5 (July 31, 2003).[8]

Using the District's own enforcement records, Petitioner has demonstrated that approximately 50 NOVs were pending before the District at the time it proposed the revised Permit. The District's most recent statements, as of January 2005, do not dispute this fact.[9] The

[8]These orders considered whether a compliance schedule was necessary to address (i) opacity violations for which the source had included a compliance schedule with its application; and (ii) PSD violations that the source contested and was litigating in federal district court. As to the uncontested opacity violations, EPA required the permitting authority to reopen the permits to either incorporate a compliance schedule or explain that a compliance schedule was not necessary because the facility was in compliance. As to the contested PSD violations, EPA found that "[i]t is entirely appropriate for the [state] enforcement process to take its course" and for a compliance schedule to be included only after the adjudication has been resolved.

[9]As stated in a letter from Adan Schwartz, Senior Assistant Counsel, BAAQMD, to Gerardo Rios, Air Division, U.S. EPA Region 9, dated January 31, 2005, "The District is following up on each NOV to achieve an appropriate resolution, which will likely entail payment of a civil penalty." EPA provided a copy of this letter to

permitting record shows that the District issued the initial Permit on December 1, 2003 and the revised Permit on December 16, 2004. According to the District, the facility did not have noncompliance issues at the time it issued the initial and revised permits. The permitting record contains the following statements:

- July 2003 Statement of Basis,"Compliance Schedule" section: "The BAAQMD Compliance and Enforcement Division has conducted a review of compliance over the past year and has no records of compliance problems at this facility." July 2003 Statement of Basis at 12.

  July 2003 Statement of Basis, "Compliance Status" section: "The Compliance and Enforcement Division has prepared an Annual Compliance Report for 2001. . . The information contained in the compliance report has been evaluated during the preparation of the Statement of Basis for the proposed major Facility Review permit. The main purpose of this evaluation is to identify ongoing or recurring problems that should be subject to a schedule of compliance. No such problems have been identified." July 2003 Statement of Basis at 35. This section also noted that the District issued eight NOVs to the refinery in 2001, but did not discuss any NOVs issued to the refinery in 2002 or the first half of 2003. EPA notes that there appear to have been approximately 36 NOVs issued during that time, each of which is identified as pending in the documentation provided by Petitioner.

  December 16, 2004 Statement of Basis: "The facility is not currently in violation of any requirement. Moreover, the District has updated its review of recent violations and has not found a pattern of violations that would warrant imposition of a compliance schedule." December 2004 Statement of Basis at 34.

  2003 Response to Comments ("RTC") (from Golden Gate University): "The District's review of recent NOV's failed to reveal any evidence of current ongoing or recurring noncompliance that would warrant a compliance schedule." 2003 RTC (GGU) at 1.

EPA finds that the District's statements at the time it issued the initial and revised Permits do not provide a meaningful explanation for the lack of a compliance schedule in the Permit. Using the District's own enforcement records, Petitioner has demonstrated that there were approximately 50 unresolved NOVs at the time the revised Permit was issued in December 2004. The District's statements in the permitting record, however, create the impression that no NOVs were pending at that time. Although the District acknowledges that there have been "recent violations," the District fails to address the fact that it had issued a significant number of NOVs to the facility and that many of the issued NOVs were still pending. Moreover, the District provides only a conclusory statement that there are no ongoing or recurring problems that

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Petitioner on February 23, 2005.

could be addressed with a compliance schedule and offers no explanation for this determination. The District's statements give no indication that it actually reviewed the circumstances underlying recently issued NOVs to determine whether a compliance schedule was necessary. The District's mostly generic statements as to the refinery's compliance status are not adequate to support the District's decision that no compliance schedule was necessary in light of the NOVs.[10]

Because the District failed to include an adequate discussion in the permitting record regarding NOVs issued to the refinery, and, in particular, those that were pending at the time the Permit was issued, and an explanation as to why a compliance schedule is not required, EPA finds that Petitioner has demonstrated that the District's consideration of the NOVs during the title V permitting process may have resulted in a deficiency in the Permit. Therefore, EPA is granting the Petition to require the District to either incorporate a compliance schedule in the Permit or to provide a more complete explanation for its decision not to do so.

When the District reopens the Permit, it may consider EPA's previous orders in the Huntley, Dunkirk, and New York Organic Fertilizer matters to make a reasonable determination that no compliance schedule is necessary because (i) the facility has returned to compliance; (ii) the violations were intermittent, did not evidence on-going non-compliance, and the source was in compliance at the time of permit issuance; or (iii) the District has opted to pursue the matter through an enforcement mechanism and will reopen the permit upon a consent agreement or court adjudication of the noncompliance issues. Consistent with previous EPA orders, the District must also ensure that the permit shield will not serve as a bar or defense to any pending enforcement action.[11] *See Huntley* and *Dunkirk* Orders at 5.

b. Episodes

Petitioner also cites the number of "episodes" at the plant in the years 2003 and 2004 as a basis for requiring a compliance schedule. Episodes are events reported by the refinery of equipment breakdown, emission excesses, inoperative monitors, pressure relief valve venting, or other facility failures. Petition at 15, n. 21. According to the District, "[e]pisodes are reportable events, but are not necessarily violations. The District reviews each reported episode. For those that represent a violation, an NOV is issued." Letter from Adan Schwartz, Senior Assistant Counsel, BAAQMD to Gerardo Rios, EPA Region IX, dated January 31, 2005. The summary chart entitled "BAAQMD Episodes" attached to the Petition shows that the District specifically

[10]In contrast, EPA notes that the state permitting authority in the Huntley and Dunkirk Orders provided a thorough record as to the existence and circumstances regarding the pending NOVs by describing them in detail in the permits and acknowledging the enforcement issues in the public notices for the permits. Huntley at 6, Dunkirk at 6. In addition, EPA found that the permits contained "sufficient safeguards" to ensure that the permit shields would not preclude appropriate enforcement actions. *Id.*

[11]After reviewing the permit shield in the Permit, EPA finds nothing in it that could serve as a defense to enforcement of the pending NOVs. The District, however, should still independently perform this review when it reopens the Permit.

records for each episode, under the heading "Status," its determination for each episode: (i) no action; (ii) NOV issued; (iii) pending; and (iv) void. This document supports the District's statement that it reviews each episode to see whether it warrants an NOV. Because not every episode is evidence of noncompliance, the number of episodes is not a compelling basis for determining whether a compliance schedule is necessary. Moreover, Petitioner did not provide additional facts, other than the summary chart, to demonstrate that any reported episodes are violations. EPA therefore finds that Petitioner has not demonstrated that the District's consideration of the various episodes may have resulted in a deficiency in the Permit, and EPA denies the Petition as to this issue.

c. Repeat Violations and Episodes at Particular Units

Petitioner claims that certain units at the plant are responsible for multiple episodes and violations, "possibly revealing serious ongoing or recurring compliance issues." Petition at 16. The Petition then cites, as evidence, the existence of 16 episodes and 8 NOVs for the FCCU Catalytic Regenerator (S-5), 9 episodes and 4 NOVs for a hot furnace (S-220), 9 episodes and 2 NOVs for the Heat Recovery Steam Generator (S-1031), and 3 episodes and 2 NOVs for the South Flare (S-18).

A close examination of the BAAQMD Episodes chart relied upon by Petitioner, however, reveals that the failures identified for these episodes and NOVs are actually quite distinct from one another, often covering different components and regulatory requirements. This fact makes sense as emission and process units at refineries tend to be very complex with multiple components and multiple applicable requirements. When determining whether a compliance schedule is necessary for ongoing violations at a particular emission unit based on multiple NOVs issued for that unit, it would be reasonable for a permitting authority to consider whether the violations pertain to the same component of the emission unit, the cause of the violations is the same, and the cause has not been remedied through the District's enforcement actions. Again, Petitioner has failed to demonstrate that the District's consideration of the various repeat episodes and alleged violations may have resulted in a deficiency in the Permit. EPA therefore denies the Petition as to this issue.

d. Complaints

Petitioner contends that the "numerous complaints" received by the District between 2001 and 2004 also lay a basis for the need for a compliance schedule. These complaints were generally for odor, smoke or other concerns. As with the episodes discussed above, the mere existence of a complaint does not evidence a regulatory violation. Moreover, where the District has verified certain complaints, it has issued an NOV to address public nuisance issues. As such, even though complaints may indicate problems that need additional investigation, they do not necessarily lay the basis for a compliance schedule. Because Petitioner has not demonstrated that the complaints received by the District may have resulted in a deficiency in the Permit, EPA denies the Petition as to this issue.

e. Allegation that Problems are not Resolved

Petitioner proposes three "potential solutions to ensure compliance:" (1) the District should address recurring compliance at specific emission units, namely S-5, S-220 and S-1030, (2) the District should impose additional maintenance or installation of monitoring equipment, or new monitoring methods to address the 30 episodes involving inoperative monitors; and (3) the District should impose additional operational and maintenance requirements to address recurring problems since the source is not operating in compliance with the NSPS requirement to maintain and operate the facility in a manner consistent with good air pollution control practice for minimizing emissions. Petition at 18-19.

In regard to Petitioner's first claim for relief, EPA has already explained that Petitioner has not demonstrated that the District's consideration of the various 'recurring' violations for particular emission units may have resulted in a deficient permit or justifies the imposition of a compliance schedule. In regard to the second claim for relief, the 30 episodes cited by Petitioner are for different monitors, and spread over a multi-year period. As long as the District seeks prompt corrective action upon becoming aware of inoperative monitors, EPA does not see this as a basis for additional maintenance and monitoring requirements for the monitors. Moreover, EPA could only require additional monitoring requirements to the extent that the underlying SIP or some other applicable requirement does not already require monitoring. *See* 40 C.F.R. § 70.6(a)(3)(i)(B). Lastly, in response to Petitioner's third claim for relief seeking imposition of additional operation and maintenance requirements due to an alleged violation of the "good air pollution control practice" requirements of the NSPS, EPA believes that such an allegation of noncompliance is too speculative to warrant a compliance schedule without further investigation. As such, EPA finds that Petitioner has not demonstrated that the District's failure to include any of the permit requirements Petitioner requests here resulted in, or may have resulted in, a deficient permit, and EPA denies the Petition on this ground.

2. Non-Compliance Issues Raised by Public Comments

Petitioner claims that since the District failed to resolve New Source Review ("NSR")[12] compliance issues, EPA should object to the issuance of the Permit and require either a compliance schedule or an explanation that one is not necessary. Petition at 21. Petitioner claims to have identified four potential NSR violations at the refinery, as follows: (i) an apparent substantial rebuild of the fluid catalytic cracking unit ("FCCU") regenerator (S-5) without NSR review,[13] based on information that large, heavy components of the FCCU were recently

[12] "NSR" is used in this section to include both the nonattainment area New Source Review permit program and the attainment area Prevention of Significant Deterioration ("PSD") permit program.

[13] Petitioner also alleges that S-5 went through a rebuild without imposition of emission limitations and other requirements of 40 C.F.R. § 63 Subpart UUU. EPA notes that the requirements of Subpart UUU are included in the Permit with a future effective date of April 11, 2005. Permit at 80.

replaced; (ii) apparent emissions increases at two boiler units (S-3 and S-4) beyond the NSR significance level for modified sources of NOx, based on the District's emissions inventory indicating dramatic increases in NOx emissions between 1993 and 2001; and (iii) an apparent significant increase in SO_2 emissions at a coker burner (S-6), based on the District's emissions inventory indicating a dramatic increase in SO_2 emissions in 2001 over the highest emission rate during 1993 to 2000.[14] Petition at 20.

All sources subject to title V must have a permit to operate that assures compliance by the source with all applicable requirements. *See* 40 C.F.R. § 70.1(b); CAA §§ 502(a), 504(a). Such applicable requirements include the requirement to obtain NSR permits that comply with applicable NSR requirements under the Act, EPA regulations, and state implementation plans. *See generally* CAA §§ 110(a)(2)(C), 160-69, 172(c)(5), and 173; 40 C.F.R. §§ 51.160-66 and 52.21. NSR requirements include the application of the best available control technology ("BACT") to a new or modified source that results in emissions of a regulated pollutant above certain legally-specified amounts.[15]

Based on the information provided by Petitioner, Petitioner has failed to demonstrate that NSR permitting and BACT requirements have been triggered at the FCCU catalytic regenerator S-5, boilers S-3 or S-4, or coke burner S-6. With regard to the FCCU catalytic regenerator, Petitioner's only evidence in support of its claim is (i) an April 8, 1999, Energy Information Administration press release that states that the refinery announced the shutdown of its FCCU on March 19, 1999, and announced the restarting of the FCCU on April 1, 1999;[16] and (ii) information posted at the Web site of Surface Consultants, Inc., stating that "several large, heavy components on [the FCCU] needed replacement." *See* Petition, Exhibit A. Petitioner offers no evidence regarding the nature of these activities, whether the activities constitute a new or modified source under the NSR rules, or whether refinery emissions were in any way affected

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[14] Petitioner also takes issue with the District's position that "the [NSR] preconstruction review rules themselves are not applicable requirements, for purposes of Title V." (Petition, at 21; December 2003 Consolidated Response to Comments ("CRTC") at 6-7). Applicable requirements are defined in the District's Regulation 2-6-202 as "[a]ir quality requirements with which a facility must comply pursuant to the District's regulations, codes of California statutory law, and the federal Clean Air Act, including all applicable requirements as defined in 40 C.F.R. § 70.2." Applicable requirements are defined in 40 C.F.R. § 70.2 to include "any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act...." Since the District's NSR rules are part of its implementation plan, the NSR rules themselves are applicable requirements for purposes of title V. Since this point has little relevance to the matter at hand (i.e., whether in this case the NSR rules apply to a particular new or modified source at the refinery), EPA views the District's position as *obiter dictum*.

[15] The Act distinguishes between the requirement to apply BACT, which is part of the PSD permit program for attainment areas, and the requirement to apply the lowest achievable emission rate ("LAER"), which is part of the NSR permit program for nonattainment areas. In this case, however, the District's NSR rules use the term "BACT" to signify "LAER."

[16] This press release is available on the Internet at http://www.eia.doe.gov/neic/press/press123.html (last viewed on February 1, 2005).

by these activities.

With regard to the two boilers and the coke burner, Petitioner's only evidence in support of its claims are apparent "dramatic" increases in each of these unit's emissions inventory. However, as the District correctly notes:

> "...the principal purpose of the inventory is planning; the precision needed for this purpose is fairly coarse. The inventory emissions are based, in almost all cases, on *assumed* emission factors, and *reported* throughputs. An increase in emissions from one year to the next as reflected in the inventory may be an indication that reported throughput has increased, however it does not automatically follow that the source has been modified. Unless the throughput exceeds permit limits, the increase usually represents use of previously unused, but authorized, capacity. An increase in reported throughput amount could be taken as an indication that further investigation is appropriate to determine whether a modification has occurred. However, the District would not conclude that a modification has occurred simply because reported throughput has increased."

December 1, 2003 Consolidated Response to Comments ("2003 CRTC"), at 22. Moreover, Petitioner does not claim to have sufficient evidence to establish that these units are subject to NSR permitting and the application of BACT. The essence of Petitioner's objection is the need for the District to "determine whether the sources underwent a physical change or change in the method of operation that increased emissions, which would trigger NSR." Petition at 20. Not only is Petitioner unable to establish that these units triggered NSR requirements, Petitioner is not even alleging that NSR requirements have in fact been triggered. Petitioner is merely requesting that the District make an NSR applicability determination based on Petitioner's "well-documented *concerns* regarding *potential* non-compliance." Petition at 20 (*emphasis added*).

During the title V permitting process, EPA has also been pursuing similar types of claims in another forum. As part of its National Petroleum Refinery Initiative, EPA identified four of the Act's programs where non-compliance appeared widespread among petroleum refiners, including apparent major modifications to FCCUs and refinery heaters and boilers that resulted in significant increases in NOx and SO_2 emissions without complying with NSR requirements. However, based on the information provided by Petitioner, EPA is not prepared to conclude at this time that these units at the Valero refinery are out of compliance with NSR requirements. If EPA later determines that these units are in violation of NSR requirements, EPA may object to or reopen the title V permit to incorporate the applicable NSR requirements.[17]

Since Petitioner has failed to show that NSR requirements apply to these units, EPA finds

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[17] EPA notes that with respect to the specific claims of NSR violations raised by Petitioner in its comments, the District "intends to follow up with further investigation." December 1, 2003 CRTC, at 22. EPA encourages the District to do so, especially where, as in this case, the apparent changes in the emissions inventories are substantial.

that Petitioner has not met its burden of demonstrating a deficiency in the Permit. Therefore, the Petition is denied on this issue.

3. Intermittent and Continuous Compliance

Petitioner contends that EPA must object to the Permit because the District has interpreted the Act to require only intermittent rather than continuous compliance. Petition at 21-22. Petitioner contends that the District has a "fundamentally flawed philosophy." Petitioner points to a statement made by the District in its Response to Public Comments, dated December 1, 2003, that "[c]ompliance by the refineries with all District and federal air regulations will not be continuous." Petitioner contends that the District "expects only intermittent compliance" and that the District's belief "that it need only assure 'reasonable intermittent' compliance" means that it failed to see the need for a compliance plan in the Permit.

EPA disagrees with Petitioner's suggestion that the District's view of intermittent compliance has impaired its ability to properly implement the title V program. As stated above, EPA has not concluded that a compliance plan is necessary to address the instances of non-compliance at this Facility. Moreover, the Agency disagrees with Petitioner's interpretations of the District's comments on the issue. For instance, EPA finds nothing in the record stating that the District's view of the Permit, as a legal matter, is that it need assure only intermittent compliance. Rather, a fairer reading of the District's view is that, realistically, intermittent non-compliance can be expected. As the District stated:

> The District cannot rule out that instances of non-compliance will occur. Indeed at a refinery, at least occasional events of non-compliance can be predicted with a high degree of certainty. . . . Compliance by the refineries with all District and federal air regulations will not be continuous. However, the District believes the compliance record at this [Shell] and other refineries is well within a range to predict reasonable intermittent compliance. December 1, 2003 RTC at 15.

The District's view appears to be based on experience and the practical reality that complex sources with thousands of emission points which are subject to hundreds of local and federal requirements will find themselves out of compliance, not necessarily because their permits are inadequate but because of the limits of technology and other factors. Even a source with a perfectly-drafted permit – one that requires state of the art monitoring, scrupulous recordkeeping, and regular reporting to regulatory agencies – may find itself out of compliance, not because the permit is deficient, but because of the limitations of technology and other factors.

EPA also believes that, far from sanctioning intermittent compliance, as Petitioner suggests, *see* Petition at 22, n. 36, the District appears committed to address it through enforcement of the Permit, when appropriate: "when non-compliance occurs, the Title V permit will enhance the ability to detect and enforce against those occurrences." *Id.* Although the District may realistically expect instances of non-compliance, it does not necessarily excuse

them. Non-compliance may still constitute a violation and may be subject to enforcement action.

For the reasons stated above, EPA denies the Petition on this ground.

4. Compliance Certifications

Initial compliance certifications must be made by all sources that apply for a title V permit at the time of the permit application. *See* 40 C.F.R. § 70.5(c)(9). The Part 70 regulations do not require applicants to update their compliance certification pending issuance of the permit. Petitioner correctly points out that the District's Regulation 2-6-426 requires annual compliance certifications on "every anniversary of the application date" until the permit is issued. Petitioner claims that, other than a truncated update in 2003, the plant has failed to provide annual certifications between the initial permit application submittal in 1996 and issuance of the permit in December 2004. Petitioner believes that "defects in the compliance certification procedure have resulted in deficiencies in the Permit." Petition at 24.

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, including compliance certifications, EPA considers whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. *See* CAA Section 505(b)(2) (objection required "if the petitioner demonstrates ... that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]"); 40 C.F.R. § 70.8(c)(1); *See also In the Matter of New York Organic Fertilizer Company*, Petition No. II-2002-12 (May 24, 2004), at 9. Petitioner assumes, in making its argument, that the District needs these compliance certifications to adequately review compliance for the facility. This is not necessarily true. Sources often certify compliance based upon information that has already been presented to a permitting authority or based upon NOVs or other compliance documents received from a permitting authority. The requirement for the plant to submit episode and other reports means that the District should be privy to all of the information available to the source pertaining to compliance, regardless of whether compliance certifications have been submitted annually. Finally, the District has a dedicated employee assigned as an inspector to the plant who visits the plant weekly and sometimes daily. In this particular instance, the compliance certification would likely not add much to the District's knowledge about the compliance status of the plant. EPA believes that in this case, Petitioner has failed to demonstrate that the lack of a proper initial compliance certification, or the alleged failure to properly update that initial compliance certification, resulted in, or may have resulted in, a deficiency in the permit.

D. Statement of Basis

Petitioner alleges that the Statements of Basis for the Permit issued in December 2003 and for the revised Permit, as proposed in August 2004, are inadequate. Specifically, Petitioner alleges the following deficiencies:

Neither Statement of Basis contains detailed facility descriptions, including comprehensive process flow information;

- Neither Statement of Basis contains sufficient information to determine applicability of "certain requirements to specific sources." Petitioner specifically identifies exemptions from permitting requirements that BAAQMD allowed for tanks. Petitioner also references Attachments 2 and 3 to EPA's October 8, 2004 letter as support for its allegation that the Statements of Basis were deficient because they did not address applicability of 40 C.F.R. Part 63, Subpart CC to flares and BAAQMD Regulation 8-2 to hydrogen plant vents.

- Neither Statement of Basis addresses BAAQMD's compliance determinations

- The 2003 Statement of Basis was not made available on the District's Web site during the April 2004 public comment period and does not include information about permit revisions in March and August 2004

  The 2004 Statement of Basis does not discuss changes BAAQMD made to the Permit between the public comment period in August 2003 and the final version issued in December 2003, despite the District's request for public comment on such changes.

EPA's Part 70 regulations require permitting authorities, in connection with initiating a public comment period prior to issuance of a title V permit, to "provide a statement that sets forth the legal and factual basis for the draft permit conditions." 40 C.F.R. § 70.7(a)(5). EPA's regulations do not require that a statement of basis contain any specific elements; rather, permitting authorities have discretion regarding the contents of a statement of basis. EPA has recommended that statements of basis contain the following elements: (1) a description of the facility; (2) a discussion of any operational flexibility that will be utilized at the facility; (3) the basis for applying the permit shield; (4) any federal regulatory applicability determinations; and (5) the rationale for the monitoring methods selected. EPA Region V has also recommended the inclusion of the following: (1) monitoring and operational restrictions requirements; (2) applicability and exemptions; (3) explanation of any conditions from previously issued permits that are not being transferred to the title V permit; (4) streamlining requirements; and (5) certain other factual information as necessary. *See, Los Medanos*, at 10, n.16.

There is no legal requirement that a permitting authority include information such as a specific facility description and process flow diagrams in the Statement of Basis, and Petitioner has not shown how the lack of this information resulted in, or may have resulted in, a deficiency in the Permit. Thus, while a facility description and process flow diagrams might provide useful information, their absence from the Statement of Basis does not constitute grounds for objecting to the Permit.

EPA agrees, in part, that Petitioner has demonstrated the Permit is deficient because the

Statement of Basis does not explain exemptions for certain tanks. This issue is addressed more specifically in Section III.H.3.

EPA agrees with Petitioner's allegation that the Statement of Basis should have included a discussion regarding applicability of 40 C.F.R. Part 63, Subpart CC to flares and BAAQMD Regulation 8-2 to hydrogen plant vents. Applicability determinations are precisely the type of information that should be included in a Statement of Basis. This issue is addressed more specifically in Section III.H.1.

EPA addressed Petitioner's allegations relating to the sufficiency of the discussion in the Statement of Basis on the necessity of a compliance schedule in Section III.C.

EPA does not agree with Petitioner's allegations that the 2003 Statement of Basis was deficient because it was not available on the District's Web site during the 2004 public comment period or because it did not provide information about the 2004 reopening. First, EPA notes that the 2003 Statement of Basis has been available to the public on its own Web site since the initial permit was issued in December, 2003.[18] In addition, Petitioner has not established a legal basis to support its claim that this information is a required element for a Statement of Basis. Petitioner also concedes that the District provided a different Statement of Basis in connection with the 2004 reopening. Petitioner does not claim that the Permit is deficient as a result of any of these alleged issues regarding the Statement of Basis, therefore, EPA denies the Petition on this ground..

EPA does not agree with Petitioner's allegations that the 2004 Statement of Basis was deficient because it did not discuss any changes made between the draft permit available in August 2003 and the final Permit issued in December 2003. Petitioner has not established a legal basis to support its claim that this information is a required element for a Statement of Basis. Petitioner has not demonstrated that the Permit is deficient because the District did not provide this discussion in the 2004 Statement of Basis. Moreover, Petitioner could have obtained much of this information by reviewing the District's response to comments received during the 2003 public comment period, which was dated December 1, 2003. Therefore, EPA denies the Petition on this ground.

E. Permit Shields

The District rules allow two types of permit shields. The permit shield types are defined as follows: (1) A provision in a title V permit explaining that specific federally enforceable regulations and standards do not apply to a source or group of sources, or (2) A provision in a title V permit explaining that specific federally enforceable applicable requirements for monitoring, recordkeeping and/or reporting are subsumed because other applicable requirements

[18]Title V permits and related documents are available through Region IX's Electronic Permit Submittal System at http://www.epa.gov/region09/air/permit/index.html.

for monitoring, recordkeeping, and reporting in the permit will assure compliance with all emission limits. The District uses the second type of permit shield for all streamlining of monitoring, recordkeeping, and reporting requirements in title V permits. The District's Statement of Basis explains: "Compliance with the applicable requirement contained in the permit automatically results in compliance with any subsumed (= less stringent) requirement." See December 2003 Statement of Basis at 27.

40 C.F.R. §§ 60.7(c) and (d)

Petitioner alleges that the permit shield in Table IX B of the Permit (p669-670) improperly subsumes 40 C.F.R. §§ 60.7(c) and (d) under SIP-approved BAAQMD Regulation 1-522.8, and that the Statement of Basis does not sufficiently explain the basis for the shield. Petition at 28.

BAAQMD Regulation 1-522.8 requires that:

> Monitoring data shall be submitted on a monthly basis in a format specified by the APCO. Reports shall be submitted within 30 days of the close of the month reported on.

Sections 60.7(c) and (d) require very specific reporting requirements that are not required by BAAQMD Regulation 1-522.8. For instance, § 60.7(c)(1) requires that excess emissions reports include the magnitude of excess emissions computed in accordance with § 60.13(h) and any conversion factors used. Section 60.7(d)(1) requires, that the report form contain, among other things, the duration of excess emissions due to startup/shutdown, control equipment problems, process problems, other known causes, and unknown causes and total duration of excess emissions.

The Statement of Basis for Valero contains the following justification for the shield:

> 40 C.F.R. Part, 60 Subpart A CMS reporting requirements are satisfied by BAAQMD 1-522.8 CEMS reporting requirements. *See* December 2003 Statement of Basis at 31.

EPA agrees with Petitioner that the requirements of 40 C.F.R. §§ 60.7(c) and (d) are not satisfied by BAAQMD Regulation 1-522.8, and that the Statement of Basis does not provide adequate justification for subsuming §§ 60.7(c) and (d). An adequate justification should address *how* the requirements of a subsumed regulation are satisfied by another regulation, not simply that the requirements *are* satisfied by another regulation.

For the reasons set forth above, EPA is granting the Petition on these grounds. The District must reopen the Permit to include the reporting requirements of §§ 60.7(c) and (d) or adequately explain how they are appropriately subsumed.

2. BAAQMD Regulation 1-7

Petitioner also alleges that the District incorrectly attempted to subsume the State-only requirements of BAAQMD Regulation 11-7 for valves under the requirements of SIP approved BAAQMD Regulation 8-18-404, and states that only a federal requirement may be subsumed in the permit pursuant to BAAQMD Regulation 2-6-233.2. Petition at 29.

Including a permit shield for a subsumed non-federally enforceable regulation has no regulatory significance from a federal perspective because it is not related to whether the permit assures compliance with all Clean Air Act requirements. See 40 C.F.R. 70.2 (defining "applicable requirement"); 70.1(b) (requiring that title V sources have operating permits that assure compliance with all applicable requirements). State only requirements are not subject to the requirements of title V and, therefore, are not evaluated by EPA unless their terms may either impair the effectiveness of the title V permit or hinder a permitting authority's ability to implement or enforce the title V permit. *In the Matter of Eastman Kodak Company*, Petition No.: II-2003-02, at 37 (Feb. 18, 2005). Therefore, EPA is denying the Petition on this issue.

3. 40 C.F.R. § 60.482-7(g)

Petitioner alleges that a permit shield should not be allowed for federal regulation NSPS Subpart VV, § 60.482-7(g) based upon its being subsumed by SIP-approved BAAQMD Regulation 8-18-404 because the NSPS defines monitoring protocols for valves that are demonstrated to be unsafe to monitor, whereas Regulation 8-18-404 refers to an alternative inspection scheme for leak-free valves. Petitioner states "Because the BAAQMD regulation does not address the same issue as 40 C.F.R. § 60.482-7(g), it cannot subsume the federal requirement." Petition at 29.

EPA disagrees with Petitioner that the two regulations address different issues. Both regulations address alternative inspection time lines for valves. Regulation 8-18-404 specifically states:

> Alternative Inspection Schedule: The inspection frequency for valves may change from quarterly to annually provided all of the conditions in Subsection 404.1 and 404.2 are satisfied.
>
> > 404.1 The valve has been operated leak free for five consecutive quarters;
> > 404.2 Records are submitted and approval from the APCO is obtained.
> > 404.3 The valve remains leak free. If a leak is discovered, the inspection frequency will revert back to quarterly.

NSPS Subpart VV requires valves to be monitored monthly except, pursuant to § 60.482-7(g), any valve that is designated as unsafe to monitor must only be monitored as frequently as practicable during safe-to-monitor times. In explaining the basis for the shield, the Permit states:

> [60.482-7(g)] Allows relief from monthly monitoring if designated as unsafe-to-monitor. BAAQMD Regulation 8-18-404 does not allow this relief. Permit at 644.

BAAQMD is correct that the Regulation 8-18-404 is more stringent than 40 C.F.R. § 60.482-7(g). Therefore, EPA is denying the Petition on this issue.

F. Throughput Limits for Grandfathered Sources

Petitioner alleges that EPA should object to the Permit to the extent that throughput limits for grandfathered sources set thresholds below which sources are not required to submit all information necessary to determine whether "new or modified construction may have occurred." Petitioner also alleges that the thresholds are not "legally correct" and therefore are not reasonably accurate surrogates for a proper NSR baseline determination. Petitioner also argues that EPA should object to the Permit because the existence of the throughput limits, even as reporting thresholds, may create "an improper presumption of the correctness of the threshold" and discourage the District from investigating events that do not trigger the threshold or reduce penalties for NSR violations. Finally, Petitioner also requests that EPA object to the Permit because the District's reliance on non-SIP Regulation 2-1-234.1 "in deriving these throughput limits" is improper.

The District has established throughput limits on sources that have never gone through new source review ("grandfathered sources"). The Clean Air Act does not require permitting authorities to impose such requirements. Therefore, to understand the purpose of these limits, EPA is relying on the District's statements characterizing the reasons for, and legal implications of, these throughput limits. The District's December 2003 CRTC makes the following points regarding throughput limits:

- The throughput limits being established for grandfathered sources will be a useful tool that enhances compliance with NSR. . . .Requiring facilities to report when throughput limits are exceeded should alert the District in a timely way to the possibility of a modification occurring.

  The limits now function merely as reporting thresholds rather than as presumptive NSR triggers.

  They do not create a baseline against which future increases might be measured ("NSR baseline"). Instead, they act as a presumptive indicator that the equipment has undergone an operational change (even in the absence of a physical change), because the equipment has been operated beyond designed or as-built capacity.

  The throughput limits do not establish baselines; furthermore, they do not contravene NSR requirements. The baseline for a modification is determined at the time of

permit review. The proposed limits do not preclude review of a physical modification for NSR implications.

- Throughput limits on grandfathered sources are not federally enforceable.

- The [permits] have been modified to clearly distinguish between limits imposed through NSR and limits imposed on grandfathered sources.

December 1, 2003 RTC at 31-33.

EPA believes the public comments and the District's responses have done much to describe and explain, in the public record, the purpose and legal significance of the District's throughput limits for grandfathered sources. Based on these interactions, EPA has the following responses to Petitioner's allegations.

First, EPA denies the Petition as to the allegation that the thresholds set levels below which the facility need not apply for NSR permits. As the District states, the thresholds do not preclude the imposition of federal NSR requirements. EPA does not see that the throughput limits would shield the source from any requirements to provide a timely and complete application if a construction project will trigger federal NSR requirements.

Second, the Permit itself makes clear that the throughput limits are not to be used for the purpose of establishing an NSR baseline: "Exceedance of this limit does not establish a presumption that a modification has occurred, nor does compliance with the limit establish a presumption that a modification has not occurred." Permit at 4. Therefore, EPA finds no basis to object to the Permit on the ground that the thresholds are not "reasonably accurate surrogates" for an actual NSR baseline, as they clearly and expressly have no legal significance for that purpose.

Third, while EPA shares Petitioner's interest in compliance with NSR requirements, Petitioner's concern that the thresholds might discourage reliance on appropriate NSR baselines to investigate and enforce possible NSR violations is speculative and cannot be the basis of an objection to the Permit.

Fourth, EPA finds that the District's reliance on BAAQMD Regulation 2-1-234.1, which is not SIP-approved, to impose these limits is appropriate. EPA's review of the Permit, however, found a statement suggesting that the District will rely on this non-SIP approved rule to determine whether an NSR modification has occurred. EPA takes this opportunity to remind the District that its NSR permits must meet the requirements of the federally-applicable SIP. *See* CAA 172, 173; 40 C.F.R. § 51. EPA finds no basis, however, to conclude that the Permit is deficient.

G. Monitoring

The lack of monitoring raises an issue as to consistency with the requirement that each permit contain monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit where the applicable requirement does not require periodic monitoring or testing. *See* 40 C.F.R. § 70.6(a)(3)(i)(B). EPA has recognized, however, that there may be limited cases in which the establishment of a regular program of monitoring or recordkeeping would not significantly enhance the ability of the permit to assure compliance with an applicable requirement and where the status quo (i.e., no monitoring or recordkeeping) could meet the requirements of 40 C.F.R. § 70.6(a)(3). *See, Los Medanos*, at 16. EPA's consideration of these issues and determinations as to the adequacy of monitoring follow.

1 40 C.F.R. Part 60, Subpart J (NSPS for Petroleum Refineries)

Petitioner makes the following allegations with regard to the treatment of flares under NSPS Subpart J: (i) BAAQMD has not made a determination as to the applicability of NSPS Subpart J to three of the four flares at Valero; (ii) there is no way to tell whether flares qualify for the exemption in NSPS Subpart J because there are no requirements in the Permit to ensure that the flares are operated only in "emergencies;" (iii) the Permit must contain a federally enforceable reporting requirement to verify that each flaring event would qualify for an exemption from the H2S limit; (iv) the Permit fails to ensure that all other NSPS Subpart J requirements are practically enforceable; and (v) federally enforceable monitoring must be imposed pursuant to 40 C.F.R. §§ 70.6(a)(3)(i)(B) and 70.6(c) and Section 504(c) of the Act to verify compliance with all applicable requirements of Subpart J. Petition at 33.

The New Source Performance Standard (NSPS) for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J, prohibits the combustion of fuel gas containing H_2S in excess of 0.10 gr/dscf at any flare built or modified after June 11, 1973. This prohibition is codified in 40 C.F.R. § 60.104(a)(1). Additionally, 40 C.F.R. §§ 60.105(a)(3-4) requires the use of continuous monitors for flares subject to § 60.104(a)(1). However, the combustion of gases released as a result of emergency malfunctions, process upsets, and relief valve leakage is exempt from the H_2S limit. The draft refinery permits proposed by BAAQMD in February 2004 applied a blanket exemption from the H_2S standard and associated monitoring for about half of the Bay Area refinery flares on the basis that the flares are "not designed" to combust routine releases. The statements of basis for the refinery permits state, however, that at least some of these flares are "physically capable" of combusting routine releases. To help assure that this subset of flares would not trigger the H_2S standard, BAAQMD included a condition in the permits prohibiting the combustion of routine releases at these flares.

Following EPA comments submitted to BAAQMD in April of 2004, BAAQMD revised its approach to the NSPS Subpart J exemption. The permits proposed to EPA in August of 2004 indicate that all flares that are affected units under 60.100 are subject to the H2S standard, except when they are used to combust process upset gases, and gases released to the flares as a result of relief valve leakages or other malfunctions. However, the permits were not revised to include the

continuous monitors required under §§ 60.105(a)(3) and (4) on the basis that the flares will always be used to combust non-routine releases and thus will never actually trigger the H2S standard or the requirement to install monitors.

With respect to Petitioner's first allegation, BAAQMD has clearly considered applicability of NSPS Subpart J to flares, and has indicated that NSPS Subpart J applies to one, S-19. Page 16 of the December 2004 Statement of Basis states:

> The Benicia Refinery has three separate flare header systems: 1) the main flare gas recovery header with flares S-18 and S-19, 2) the acid gas flare header with flare S-16, and 3) the butane flare header with flare S-17. Flares S-16 and S-18 were placed in service during the original refinery startup in 1968. Flare S-17 was placed in service with the butane tank TK-1726 in 1972. Flare S-19 was added to the main gas recovery header in 1974 to ensure adequate relief capacity for the refinery. S-19 is subject to NSPS Subpart J, because it was a fuel gas combustion device installed after June 11, 1973, the effective date of 60.100(b).

The table on page 18 of the Statement of Basis also directly states that flares S-16, S-17, and S-18 are not subject to NSPS Subpart J. While the Permit would be clearer if BAAQMD included a statement that the flares have not been modified so as to trigger the requirements of NSPS Subpart J, such a statement is not required by title V. Therefore, EPA is denying the Petition on this issue.

However, EPA agrees with Petitioner that the Permit is flawed with respect to issues (ii) and (iii) above. First, the continuous monitoring of §§ 60.105(a)(3) and (4) is not included in the Permit because, BAAQMD claims, flare S-19 is never used in a manner that would trigger the H2S standard and the requirement to install a continuous monitor. While the Permit does contain District–enforceable only monitoring to show compliance with a federally enforceable condition prohibiting the combustion of routinely-released gases in a flare (20806, #7), there is currently no federally enforceable monitoring requirement in the Permit to demonstrate compliance with this condition or with NSPS Subpart J, both federally enforceable applicable requirements. Because NSPS Subpart J is an applicable requirement, the Permit must contain periodic monitoring pursuant to 40 C.F.R. § 70.6(a)(3)(i)(B) and BAAQMD Reg. 6-503 (BAAQMD Manual of Procedures, Vol. III, Section 4.6) to show compliance with the regulation.

Therefore, EPA is granting the Petition on the basis that the Permit does not assure compliance with NSPS Subpart J, or with federally enforceable permit condition 20806, #7. BAAQMD must reopen the Permit to either include the monitoring under sections 60.105(a)(3) or (4), or, for example, to include adequate federally enforceable monitoring to show compliance with condition 20806, #7.

With respect to issues (iv) and (v), it is unclear what other requirements Petitioner is referring to, or what monitoring Petitioner is requesting. For these reasons, EPA is denying the

Petition on these grounds.

2. Flare Opacity Monitoring

Petitioner notes that flares are subject to SIP-approved BAAQMD Regulation 6-301, which prohibits visible emissions from exceeding defined opacity limits for a period or periods aggregating more than three minutes in any hour. Petitioner alleges that the opacity limit set forth in Regulation 6-301 is not practically enforceable during short-duration flaring events because no monitoring is required for flaring events that last less than fifteen minutes and only limited monitoring is required for events lasting less than thirty minutes. Petitioner alleges that repeated violations of BAAQMD Regulation 6-301 due to short-term flaring could be an ongoing problem that evades detection.

The opacity limit in Regulation 6-301 does not contain periodic monitoring. Because the underlying applicable requirement imposes no monitoring of a periodic nature, the Permit must contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit . . . ." 40 C.F.R. § 70.6(a)(3)(i)(B). Thus, the issue before EPA is whether the monitoring imposed in the Permit will result in reliable and representative data from the relevant time period such that compliance with the Permit can be determined.

In this case, the District has imposed certain monitoring conditions to determine compliance with the opacity standard during flaring events. The Permit defines a "flaring event" as a flow rate of vent gas flared in any consecutive 15 minute period that continuously exceeds 330 standard cubic feet per minute (scfm). Within 15 minutes of detecting a flaring event, the facility must conduct a visible emissions check. The visible emissions check may be done by video monitoring. If the operator can determine there are no visible emissions using video monitoring, no further monitoring is required until another 30 minutes has expired. If the operator cannot determine there are no visible emissions using video monitoring, the facility must conduct either an EPA Reference Method 9 test or survey the flare according to specified criteria. If the operator conducts Method 9 testing, the facility must monitor the flare for at least 3 minutes, or until there are no visible emissions. If the operator conducts the non-Method 9 survey, the facility must cease operation of the flare if visible emissions continue for three consecutive minutes.

Although EPA agrees with Petitioner that the Permit does not require monitoring during short-duration flaring events, EPA does not believe Petitioner has demonstrated that the periodic monitoring is inadequate. For instance, Petitioner has not shown that short-duration flaring events are likely to be in violation of the opacity standard, nor has Petitioner made a showing that short-duration flaring events occur frequently or at all. Thus, Petitioner has not demonstrated that the periodic monitoring in the Permit is insufficient to detect violations of the opacity standard.

Additionally, in June 1999, a workgroup comprised of EPA, CAPCOA and CARB staff completed a set of periodic monitoring recommendations for generally applicable SIP requirements such as Regulation 6-301. The workgroup's relevant recommendation for refinery flares was a visible emissions check "as soon as an intentional or unintentional release of vent gas to a gas flare but no later than one hour from the flaring event." *See* CAPCOA/CARB/EPA Region IX Periodic Monitoring Memo, June 24, 1999, at 2. In comparison, the periodic monitoring contained in the Permit would appear to be both less stringent, by not requiring monitoring for up to thirty minutes of a release of gas to a flare, and more stringent, by requiring monitoring within 30 minutes rather than one hour. Therefore, EPA encourages the District to amend the Permit to require monitoring upon the release to the flare, rather than delaying monitoring as currently set forth in the Permit.

Finally, EPA notes that the Permit does not prevent the use of credible evidence to demonstrate violations of permit terms and conditions. Even if the Permit does not require visible emissions checks for short-duration flaring events, EPA, the District, and the public may use any credible evidence to bring an enforcement case against the source. 62 Fed. Reg. 8314 (Feb. 24, 1997).

For the reasons cited above, EPA is denying the Petition on this issue.

3 Cooling Tower Monitoring

Petitioner claims that the Permit lacks monitoring conditions adequate to assure that the cooling tower complies with SIP-approved District Regulations 8-2 and 6. Petitioner further alleges that the District's decisions to not require monitoring for the cooling towers is flawed due to its use of AP-42 emission factors, which may not be representative of the actual cooling tower emissions.

a. Regulation 8-2

District Regulation 8-2-301 prohibits miscellaneous operations from discharging into the atmosphere any emission that contains 15 lb per day and a concentration of more than 300 ppm total carbon. Although the underlying applicable requirement does not contain periodic monitoring requirements, the District declined to impose monitoring on source S-29 to assure compliance with the emission limit.[19]

The December 1, 2003 Statement of Basis sets forth the grounds for the District's decision that monitoring is not necessary to assure compliance with this applicable requirement. First, the District stated that its monitoring decisions were made by balancing a variety of factors including 1) the likelihood of a violation given the characteristics of normal operation, 2) the degree of variability in the operation and in the control device, if there is one, 3) the potential

[19] *See* Permit, Table VII – C5 Cooling Tower, pp. 541

severity of impact of an undetected violation, 4) the technical feasibility and probative value of indicator monitoring, 5) the economic feasibility of indicator monitoring, and 6) whether there is some other factor, such as a different regulatory restriction applicable to the same operation, that also provides some assurance of compliance with the limit in question. In addition, the District provided calculations that purported to quantify the emissions from the facility's cooling tower. The calculations relied upon water circulation and exhaust airflow rates supplied by the refinery in addition to two AP-42 emission factors. The District found that the calculated emissions were much lower than the regulatory limit and concluded that monitoring was not necessary. Although it is true that the results suggest there may be a large margin of compliance, the nature of the emissions and the unreliability of the data used in the calculations renders them inadequate to support a decision that no monitoring is needed over the entire life of the permit.

An AP-42 emission factor is a value that roughly correlates the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant. The use of these emission factors may be appropriate in some permitting applications, such as establishing operating permit fees. However, EPA has stated that AP-42 factors do not yield accurate emissions estimates for individual sources. *See In the Matter of Cargill, Inc.*, Petition IV-2003-7 (Amended Order) at 7, n.3 (Oct.19, 2004); *In re: Peabody Western Coal Co.*, CAA Appeal No. 04-01, at 22-26 (EAB Feb. 18, 2005). Because emission factors essentially represent an average of a range of facilities and emission rates, they are not necessarily indicative of the emissions from a given source at all times; with a few exceptions, use of these factors to develop source-specific permit limits or to determine compliance with permit requirements is generally not recommended. The District's reliance on the emission factors in making its monitoring decision is therefore problematic.

Atmospheric emissions from the cooling towers include fugitive VOCs and gases that are stripped from the cooling water as the air and water come into contact. In an attempt to develop a conservative estimate of the emissions, the District used the emission factor for "uncontrolled sources." For these sources, AP-42 Table 5.1.2 estimates the release of 6 lb of VOCs per million gallons of circulated water. This emission factor carries a "D" rating, which means that it was developed from a small number of facilities, and there may be reason to suspect that the facilities do not represent a random or representative sample of the industry. In addition, this rating means that there may be evidence of variability within the source population. In this case the variability stems from the fact that 1) contaminants enter the cooling water system from leaks in heat exchangers and condensers, which are not predictable, and 2) the effectiveness of cooling tower controls is itself highly variable, depending on refinery configuration and existing maintenance practices.[20] It is this variability that renders the emission factor incapable of assuring continued compliance with the applicable standard over the lifetime of the permit. For all practical purposes, a single emission factor that was developed to represent long-term average emissions can not forecast the occurrence and size of leaks in a collection of heat exchangers and is therefore not predictive of compliance at any specific time.

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[20]AP 42, Fifth Edition, Volume I, Chapter 5

EPA has previously stated that annual reporting of NOx emissions using an equation that uses current production information, along with emission factors based on prior source tests, was insufficient to assure compliance with an emission unit's annual NOx standard. Even when presented with CEMs data which showed that actual NOx emissions for each of five years were consistently well below the standard, EPA found that a large margin of compliance alone was insufficient to demonstrate that the NOx emissions would not change over the life of the permit. *See In the Matter of Fort James Camas Mill*, Petition No. X-1999-1, at 17-18, (December 22, 2000).

Consistent with its findings in regard to the Fort James Camas Mill permit, EPA finds in this instance that the District failed to demonstrate that a one-time calculation is representative of ongoing compliance with the applicable requirement, especially considering the unpredictable nature of the emissions and the unreliability of the data used in the calculations. Therefore, under the authority of 40 C.F.R. § 70.6(a)(3)(i)(B), EPA is granting Petitioner's request to object to the Permit as the request pertains to cooling tower monitoring for District Regulation 8-2-301.

As an alternative to meeting the emission limitation cited in Section 8-2-301, facilities may operate in accordance with an exemption under Section 8-2-114, which states, "emissions from cooling towers...are exempt from this Rule, provided best modern practices are used." As a result, in lieu of adding periodic monitoring requirements adequate to assure compliance with the emission limit in Section 8-2-301, the District may require the Statement of Basis to include an applicability determination with respect to Section 8-2-114 and revise the Permit to reflect the use of best modern practices.

b. Regulation 6

BAAQMD SIP-approved Regulation 6 contains four particulate matter emissions standards for which Petitioner objects to the absence of monitoring. The District's decision for each standard is discussed separately below.

(1) Regulation 6-310

BAAQMD Regulation 6-310 limits the emissions from the cooling tower to 0.15 grains per dry standard cubic foot. Appendix G of the December 1, 2003 Statement of Basis sets forth the grounds for the District's decision that monitoring is not necessary to assure compliance with this requirement. Specifically, Appendix G provides calculations for the particulate matter emissions from the cooling tower and compares the expected emission rate to the regulatory limit. In calculating the emissions, the District used the PM-10 emission factor of 0.019 lb per 1000 gal circulating water from Table 13.4-1 of AP-42. The calculations show that the emissions are expected to be approximately 180 times lower than the emission limit. As a result, the District concluded that periodic monitoring is not necessary to assure compliance with the standard.

Petitioner alleges that these calculations do not adequately justify the District's decision because the AP-42 emission factor used carries an E rating, which means that it is of poor quality. As a result, Petitioner claims it is unlikely that the calculated emissions based on this factor are representative of the actual cooling tower emissions.

Petitioner is correct that the emission factor used by the District has an E rating. However, EPA disagrees that this rating alone is sufficient to conclude that the emission factor is not representative of the emissions from the cooling towers at the refinery. PM-10 emissions from cooling towers are generated when drift droplets evaporate and leave fine particulate matter formed by crystallization of dissolved solids. Particulate matter emission estimates can be obtained by multiplying the total liquid drift factor by the total dissolved solids (TDS) fraction in the circulating water. The AP-42 emission factor used by the District is based on a drift rate of 0.02% of the circulating water flow and a TDS content of approximately 12,000 ppm. With regard to both parameters, the District indicated in the December 1, 2003 Statement of Basis that the emission factor yielded a higher estimate of the emissions than the actual drift and TDS data that was supplied by the refineries. Therefore, EPA believes that the District's reliance on this emission factor does not demonstrate a deficiency in the Permit.[21]

EPA notes that the emission factor's poor rating is due in part to the variability associated with cooling tower drift and TDS data. As discussed in the Statement of Basis, the degree to which the emissions may vary was taken into account when considering the ability of the emission factor to demonstrate compliance with the emission limit. With respect to the drift, EPA believes that the emission factor is conservatively high compared to the 0.0005% drift rate that cooling towers are capable of achieving. Where TDS are concerned, AP-42 indicates that the dissolved solids content may range from 380 ppm to 91,000 ppm. While the emission factor represents a TDS concentration at the lower end of this spectrum, increases in the TDS content do not significantly increase the grain loading due to the large exhaust air flow rates exiting the cooling towers. Even assuming that the TDS concentration reached 91,000 ppm, the calculated emissions are still approximately 22 times lower than the regulatory limit.[22]

The District has provided sufficient evidence to demonstrate that the emissions will not vary by a degree that would cause an exceedance of the standard. Given the representative air flow and water circulation rates supplied by the refinery, compliance with the applicable requirement is expected under conditions (i.e., maximum TDS content) that represent a reasonable upper bound of the emissions. Therefore, EPA is denying Petitioner's request to object to the Permit as it pertains to periodic monitoring for Regulation 6-310.

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[21] Although EPA stated above in the discussion for Regulation 8-2 that AP-42 emission factors are generally not recommended for use in determining compliance with emission limits, there are exceptions. Data supplied by the refineries indicates that the AP-42 emission factor for PM-10 conservatively estimates the actual cooling tower emissions; as discussed further below, compliance with the limit is expected under conditions that represent a reasonable upper bound on the emissions.

[22] Again, this is assuming a drift rate of 0.02%.

(2) Regulation 6-31

BAAQMD Regulation 6-311 states that no person shall discharge particulate matter into the atmosphere at a rate in excess of that specified in Table 1 of the Rule for the corresponding process weight rate. Assuming the process weight rate for the cooling tower remains at or above the maximum level specified in Table 1, the rule establishes a maximum emission rate of 40 lb/hr. Unlike for Regulation 6-310, the District provided no justification for its decision to not require monitoring to assure compliance with this limit.

Using the PM-10 emission factor cited by the District in its calculations for Regulation 6-310, EPA estimates the emissions from S-29 to be in excess of 40 lb/hr. While the District stated that the emission factor represents a more conservative estimate of the emissions than the actual data provided by the refineries, it did not say how conservative the factor is. As a result, the District's monitoring decision is unsupported by the record and EPA finds that the Permit fails to meet the Part 70 standard that it contain periodic monitoring sufficient to yield reliable data that are representative of the source's compliance with its terms. *See* 40 C.F.R. § 70.6(a)(3)(i)(B). Therefore, EPA is granting Petitioner's request to object to the Permit. The Permit must include periodic monitoring adequate to assure compliance with BAAQMD Regulation 6-311. *See* 40 C.F.R. § 70.6(a)(3)(i)(B).

(3) Regulation 6-305

BAAQMD Regulation 6-305 states that, "a person shall not emit particles from any operation in sufficient number to cause annoyance to any other person...This Section 6-305 shall only apply if such particles fall on real property other than that of the person responsible for the emission." Nuisance requirements such as this may be enforced by EPA and the District at any time and there is no practical monitoring program that would enhance the ability of the permit to assure compliance with the applicable requirement. Therefore, EPA is denying Petitioner's request to object to the Permit as it pertains to monitoring for BAAQMD Regulation 6-305.

(4) Regulation 6-301

BAAQMD Regulation 6-301 states that a person shall not emit from any source for a period or periods aggregating more than three minutes in any hour, a visible emission which is as dark or darker than No. 1 on the Ringelmann Chart. While the Statement of Basis does not contain a justification for the District's decision that monitoring is not required for this standard, the District stated the following in response to public comments: "The District has prepared an analysis based on the AP-42 factors for particulate, which are very conservative, and has indeed determined that 'it is virtually impossible for cooling towers to exceed visible or grain loading limitations.' The calculations show that the particulate grain loading is a hundredth or less than the 0.15 gr/dscf standard due to the large airflows. When the grain loading is so low, visible emissions are not expected." 2003 CRTC at 59. EPA finds the District's assessment of the visible emissions to be reasonable and that Petitioner has not demonstrated otherwise. Therefore,

EPA is denying Petitioner's request to object to the Permit as it pertains to monitoring for BAAQMD Regulation 6-301.

4. Monitoring of Pressure Relief Valves

Petitioner alleges that the Permit must include additional monitoring to assure that all pressure relief valves at the facility are in compliance with the requirements of SIP-approved District Regulation 8-28 (Episodic Releases from Pressure Relief Valves). Petition at 36.

Regulation 8-28 requires that within 120 days of the first "release event" at a facility, the facility shall equip each pressure relief device of that source with a tamperproof tell-tale indicator that will show that a release has occurred since the last inspection. Regulation 8-28 also requires that a release event from a pressure relief device be reported to the APCO on the next working day following the venting. Petitioner states that neither the regulation nor the Permit includes any monitoring requirements to ensure that the first release event of a relief valve would ever be recorded, and that available tell-tale indicators or another objective monitoring method should be required for all pressure relief valves at the refinery, regardless of a valve's release event status.

First, EPA believes that the requirement that a facility report all release events to the District is adequate to ensure that the first release event would be recorded. EPA also notes that the refinery is subject to the title V requirement to certify compliance with all applicable requirements, including Regulation 8-28. See 40 C.F.R. § 70.6(c)(5). Thus, EPA does not have a basis to determine that the reporting requirement would not assure compliance with the applicable requirement at issue.

For the reasons stated above, EPA is denying the Petition on this issue.

5. Additional Monitoring Problems Identified by Petitioner

Petitioner claims that several sources with federally enforceable limits under BAAQMD Regulation 6 do not have monitoring adequate to assure compliance. The sources and limits at issue are discussed separately below.

Sulfur Storage Pit (S-157) / BAAQMD Regulations 6-301 and 6-310

BAAQMD Regulation 6 contains two particulate matter emissions standards for which Petitioner objects to the absence of monitoring. Specifically, BAAQMD Regulation 6-301 limits visible emissions to less than Ringelmann No. 1 and Regulation 6-310 limits the emissions to 0.15 gr. per dscf. Although Regulation 6 does not contain periodic monitoring requirements for either of the standards, the District declined to impose monitoring on this source.

The December 1, 2003 Statement of Basis provides the District's justification for not

requiring monitoring. Specifically, the District stated, "Source is capable of exceeding visible emissions or grain loading standard only during process upset. Under such circumstances, other indicators will alert the operator that something is wrong." *See* December 1, 2003 Statement of Basis, n. 4, at 23. If the source is not capable of exceeding the emission standards at times other than process upsets, it is reasonable that the District would not require regularly scheduled monitoring during normal operations. However, if, as stated by the District, S-157 is capable of exceeding the emission standards during process upsets, monitoring during those periods may be necessary. While the District stated that indicators would alert the operator that something is wrong in the event of a process upset, the District failed to demonstrate how the indicators or the operator's response would assure compliance with the applicable limits.

EPA finds in this case that the District's decision to not require monitoring is not adequately supported by the record. Therefore, EPA is granting Petitioner's request to object to the Permit as it pertains to monitoring for S-157. The District must re-open the Permit to include periodic monitoring that yields reliable data that are representative of the source's compliance with the permit or further explain in the Statement of Basis why monitoring is not needed.

b. Lime Slurry Tanks (S-174 and S-175) / BAAQMD Regulations 6-301, 6-310, and 6-311

BAAQMD Regulation 6 contains three standards for which Petitioner objects to the absence of monitoring. Regulation 6-311 sets a variable emission limit depending on the process weight rate and the requirements of 6-301 and 6-310 are described above. Regulation 6 does not contain periodic monitoring requirements for any of the standards and the District did not impose monitoring on these sources.

As in the previous case for source S-157, the Statement of Basis states that the District did not require monitoring to assure compliance with Regulations 6-301 and 6-310 because the "source is capable of exceeding visible emissions or grain loading standard only during process upset. Under such circumstances, other indicators will alert the operator that something is wrong." *See* December 1, 2003 Statement of Basis, n. 4, at 23. The Statement of Basis is silent on the District's monitoring decision for Regulation 6-311. Therefore, for the reasons stated above, EPA is granting Petitioner's request to object to the Permit as it pertains to monitoring for sources S-174 and S-175 to assure compliance with Regulations 6-301, 6-310, and 6-311. The District must reopen the Permit to include periodic monitoring or further explain in the Statement of Basis why monitoring is not needed.

c Diesel Backup Generators (S-240, S-241, and S-242) / BAAQMD Regulations 6-303.1 and 6-310

BAAQMD Regulation 6 contains two particulate matter emissions standards for which Petitioner objects to the absence of monitoring. The requirement of Regulation 6-310 is described above and Regulation 6-303.1 limits visible emissions to Ringelmann No. 2.

Regulation 6 does not contain periodic monitoring requirements for any of the standards and the District did not impose monitoring on these sources.

As a preliminary matter, EPA notes that opacity monitoring is generally not necessary for California sources firing on diesel fuel, based on the consideration that sources in California usually combust low-sulfur fuel.[23] Therefore, EPA is denying Petitioner's request to object to the Permit as it pertains to monitoring for Regulation 6-303.1.

With regard to Regulation 6-310, the December 1, 2003 Statement of Basis sets forth the basis for the District's decision that monitoring is not necessary. Specifically, the District states, "No monitoring [is] required because this source will be used for emergencies and reliability testing only." While it is true that Condition 18748 states these engines may only be operated to mitigate emergency conditions or for reliability-related activities (not to exceed 100 hours per year per engine), this condition is not federally enforceable. Absent federally enforceable restrictions on the hours of operation, the District's decision not to require monitoring is not adequately supported. Therefore, EPA is granting Petitioner's request to object to the Permit as it pertains to Regulation 6-310. The District must reopen the Permit to add periodic monitoring to assure compliance with the applicable requirement or further explain in the statement of basis why it is not necessary.

d. FCCU Catalyst Regenerator (S-5) and Fluid Coker (S-6) / BAAQMD Regulation 6-305

BAAQMD Regulation 6 contains one particulate matter emission standard for which Petitioner objects to the absence of monitoring. Regulation 6 does not contain periodic monitoring requirements for any of the standards and the District did not impose monitoring on these sources.

BAAQMD Regulation 6-305 states that, "a person shall not emit particles from any operation in sufficient number to cause annoyance to any other person...This Section 6-305 shall only apply if such particles fall on real property other than that of the person responsible for the emission." Petitioner has failed to establish that there is any practical monitoring program that would enhance the ability of the permit to assure compliance with the applicable requirement. Therefore, EPA is denying Petitioner's request to object to the Permit as it pertains to monitoring for BAAQMD Regulation 6-305.

e. Coke Transport, Catalyst Unloading, Carbon Black Storage, and Lime Silo (S-8, S-10, S-11, and S-12) / BAAQMD Regulation 6-311.

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[23]Per CAPCOA/CARB/EPA Region IX agreement. *See Approval of Title V Periodic Monitoring Recommendations*, June 24, 1999.

BAAQMD Regulation 6 contains one particulate matter emission standard for which Petitioner objects to the absence of monitoring. Specifically, BAAQMD Regulation 6-311 sets a variable emission limit depending on the process weight rate. Regulation 6 does not contain periodic monitoring requirements for any of the standards and the District did not impose monitoring on these sources.

For all four emission sources, the Permit requires monitoring with respect to Regulations 6-301 and 6-310 but not 6-311. Given this apparent conflict and the failure of the Statement of Basis to discuss the absence of monitoring, EPA finds that the District's decision in this case is not adequately supported by the record. Therefore, EPA is granting Petitioner's request as it pertains to monitoring for sources S-8, S-10, S-11, and S-12. The District must reopen the Permit to include periodic monitoring for Regulation 6-311 that yields reliable data that are representative of the source's compliance with the permit or explain in the Statement of Basis why monitoring is not needed.

H. Miscellaneous Permit Deficiencies

1 Missing Federal Requirements for Flares (Subpart CC)

Petitioner states that the District incorrectly determined that Valero flares are categorically exempt from 40 C.F.R. § 63 Subpart CC (NESHAP for Petroleum Refineries). Petitioner further states that "EPA disagreed with the District's claim that the flares qualify for a categorical exemption from Subpart CC when used as an alternative to the fuel gas system," and that the Valero Permit and Statement of Basis contain incorrect applicability determinations for flares S-18 and S-19, and that there is not enough information to determine applicability for flares S-16 and S-17. Petitioner states that for all flares subject to Subpart CC, the Permit must include all applicable requirements, including 40 C.F.R. § 63 Subpart A, by reference from 40 C.F.R. § 63 Subpart CC. Petitioner goes on to note that Petitioner has requested in past comments that the District determine the potential applicability of a number of federal regulations to the Valero flares, including 40 C.F.R. § 63 Subpart A, 40 C.F.R. § 63 Subpart CC, and 40 C.F.R. § 60 Subpart A, but that the District did not do so. Petitioner notes that given a lack of relevant information, Petitioner was unable to make an independent evaluation of applicability. Petitioner also alleges that EPA agreed with Petitioner that the District failed to provide sufficient information for the applicability determinations for flares S-16 and S-70 via Attachment 2 of EPA's October 8 comment letter. Finally, Petitioner states that EPA must object to the Permit until the District provides a sufficient analysis regarding the applicability of these federal rules to the Valero flares, and until the Permit contains all applicable requirements.

a. 40 C.F.R. Part 60, Subpart A

EPA finds that the applicability of 40 C.F.R. § 60 Subpart A is adequately addressed in the December 16, 2004 Statement of Basis for Valero. *See* Statement of Basis at 18 (Dec. 16, 2004). The District has included a table on page 18 of the December 16, 2004 Statement of Basis

indicating applicability of NSPS Subpart A to each of Valero's flares. Therefore, EPA is denying the Petition on this issue.

b. 40 C.F.R. Part 63, Subparts A and CC

40 C.F.R. Part 63, Subpart CC contains the Maximum Achievable Control Technology ("MACT") requirements for petroleum refineries. Under Subpart CC, the owner or operator of a Group 1 miscellaneous process vent, as defined in § 63.641, must reduce emissions of Hazardous Air Pollutants either by using a flare that meets the requirements of section 63.11 or by using another control device to reduce emissions by 98% or to a concentration of 20 ppmv. 40 C.F.R. § 63.643(a)(1). If a flare is used, a device capable of detecting the presence of a pilot flame is required. 40 C.F.R. § 63.644(a)(2).

The applicability provisions of Subpart CC are set forth in section 63.640, "Applicability and designation of affected source." Section 63.640(a) provides that Subpart CC applies to petroleum refining process units and related emissions points. The Applicability section further provides that affected sources subject to Subpart CC include emission points that are "miscellaneous process vents." 40 C.F.R. § 63.640(c)(1). The Applicability section also provides that affected sources do not include emission points that are routed to a fuel gas system. 40 C.F.R. § 63.640(d)(5). Gaseous streams routed to a fuel gas system are specifically excluded from the definition of "miscellaneous process vent," as are "episodic or nonroutine releases such as those associated with startup, shutdown, malfunction, maintenance, depressuring, and catalyst transfer operations." 40 C.F.R. § 63.641.

The District's Statement of Basis indicates that flares S-18 and S-19 are not subject to MACT Subpart CC pursuant to the exemption set forth in 40 C.F.R. § 63.640(d)(5). *See* December 16, 2004 Statement of Basis at 18. In the BAAQMD February 15, 2005 Letter, BAAQMD again asserted section 63.640(d)(5) as a basis for finding that the refinery's flares are not required to meet the standards in Subpart CC. EPA continues to believe that a detailed analysis of the configuration of the flare and compressor is required to exempt a flare on the basis that it is part of the fuel gas system.

BAAQMD's February 15, 2005 letter also provides an alternative rationale that gases vented to the refinery's flares are not within the definition of "miscellaneous process vents." Specifically, BAAQMD asserts that the flares are not miscellaneous process vents because they are used only to control "episodic and nonroutine" releases. As BAAQMD states:

> At all of the affected refineries, process gas collected by the gas recovery system are routed to flares only under two circumstances: (1) situations in which, due to process upset or equipment malfunctions, the gas pressure in the flare header rises to a level that breaks the water seal leading to the flares; or (2) situations in which, during process startups, shutdown, malfunction, maintenance, depressuring [sic], and catalyst transfer operations are, by definition, not miscellaneous process vents, and are not subject to

Subpart CC.

EPA agrees that a flare used only under the two circumstances described by the District would not be subject to Subpart CC because such flares are not used to control miscellaneous process vents as that term is defined in § 63.641. According to the BAAQMD February 15, 2005 Letter, BAAQMD intends to revise the Statement of Basis to further explain its rationale that Subpart CC does not apply to the Bay Area refinery flares, and intends to solicit public comment on its rationale.

Because the Permit and the Statement of Basis for Valero's flares S-18 and S-19 contain contradictory information with regard to the use of these flares, EPA agrees with Petitioner that the Statement of Basis is lacking a sufficient analysis regarding the applicability of MACT CC to these flares. Therefore, EPA is granting the Petition on this issue. BAAQMD must reopen the Permit to address applicability in the Statement of Basis, and, if necessary, to include the flare requirements of MACT Subpart CC in the Permit.

2. Basis for Tank Exemptions

Petitioner claims that the statement of basis and the Permit lack adequate information to support the proposed exempt status for numerous tanks identified in Table IIB of the Permit.

Table IIB of the Permit contains a list of 43 emission sources that have applicable requirements in Section IV of the Permit but that were determined by the District to be exempt from BAAQMD Regulation 2, which specifies the requirements for Authorities to Construct and Permits to Operate. Rule 1 of the regulation contains numerous exemptions that are based on a variety of physical and circumstantial grounds. EPA agrees with Petitioner that the Permit itself contains insufficient information to determine the basis for the exempt status of the equipment with respect to the exemptions in the rule. However, for most of the sources in Table IIB, Petitioner's claim that the Statement of Basis lacks the information is factually incorrect. Petitioner is referred to pages 94-99 of the Statement of Basis that accompanied the Permit issued by the District on December 1, 2003. Nonetheless, EPA is granting Petitioner's request on a limited basis for the reasons set forth below.

EPA's regulations state that the permitting authority must provide the Agency with a statement of basis that sets forth the legal and factual basis for the permit conditions. 40 C.F.R. § 70.7(a)(5). EPA has provided guidance on the content of an adequate statement of basis in a letter dated December 20, 2001, from Region V to the State of Ohio[24] and in a Notice of Deficiency (NOD) issued to the State of Texas.[25] These documents describe several key elements of a statement of basis, specifically noting that a statement of basis should address any

[24]The letter is available at: http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/sbguide.pdf.

[25]67 Fed. Reg. 732 (January 7, 2002).

federal regulatory applicability determinations. The Region V letter also recommends the inclusion of topical discussions on issues including but not limited to the basis for exemptions. Further, in response to a petition filed in regard to the title V permit for the Los Medanos Energy Center, EPA concluded that a statement of basis should document the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and EPA with a record of the applicability and technical issues surrounding the issuance of the permit. Such a record ought to contain a description of the origin or basis for each permit condition or exemption. *See, Los Medanos*, at 10.

As stated in *Los Medanos*, the failure of a permitting authority to meet the procedural requirement to provide a statement of basis does not necessarily demonstrate that the title V permit is substantively flawed. In reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, EPA considers whether the petitioner has demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. *See* CAA § 505(b)(2) (objection required "if the petitioner demonstrates . . . that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]"); *see also* 40 C.F.R. § 70.8(c)(1). Thus, where the record as a whole supports the terms and conditions of the permit, flaws in the statement of basis generally will not result in an objection. *See e.g., Doe Run*, at 24-25. In contrast, where flaws in the statement of basis resulted in, or may have resulted in, deficiencies in the title V permit, EPA will object to the issuance of the permit.

With regard to the Valero Permit, the majority of the sources listed in Table IIB are identified in the December 1, 2003 Statement of Basis along with a citation from Regulation 2 describing the basis of the exemption. For the sources that fall within this category, EPA finds that the permit record supports the District's determination for the exempt status of the equipment. However, in reviewing the December 16, 2004 Statement of Basis, EPA noted that three of the sources listed in Table IIB of the Permit are not included in the statement of basis with the corresponding citations for the exemptions.[26] For these sources, the failure of the record to support the terms of the Permit is adequate grounds for objecting to the Permit. Therefore, EPA is granting Petitioner's request to object to the Permit with respect to the listing of exempt sources in Table IIB but only as the request pertains to the three sources identified herein. Although EPA is not aware of other errors, the District should review the circumstances for all of the sources in Table IIB and the corresponding table in the statement of basis to further ensure that the Permit is accurate and that the record adequately supports the Permit. EPA also encourages the District to add the citation for each exemption to Table IIB as was done for the ConocoPhillips, Chevron, and Shell permits.

3 Public Participation

[26]Compare Table IIB of the Permit with the December 1, 2003 statement of basis for the LPG Truck Loading Rack, the TK-2710 Fresh Acid Tank, and the Cogeneration Plant Cooling Tower.

Petitioner argues that the District did not, in a timely fashion, make readily available to the public, compliance information that is relevant to evaluating whether a schedule of compliance is necessary. Specifically, Petitioner asserts that it had to make several requests under the California Public Records Act to obtain "relevant information concerning NOVs issued to the facility between 2001 and 2004" and the "2003 Annual Report and other compliance information, which is not readily available." Petitioner states that it took three weeks for the District to produce the information requested in Petitioner's "2003 PRA request." Petitioner contends that it expended significant resources to obtain the data and received the data so late in the process that they could not be sufficiently analyzed.

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, such as Petitioner's claims here that the District failed to comply with public participation requirements, EPA considers whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. *See* CAA, Section 505(b)(2)(objection required "if the petitioner demonstrates ... that the permit is not in compliance with the requirements of [the Act], including the requirements of the applicable [SIP].") EPA's title V regulations specifically identify the failure of a permitting authority to process a permit in accordance with procedures approved to meet the public participation provisions of 40 C.F.R. § 70.7(h) as grounds for an objection. 40 C.F.R. § 70.8(c)(3)(iii). District Regulations 2-6-412 and 2-6-419 implement the public participation requirements of 40 C.F.R. § 70.7(h). District Regulation 2-6-412, *Public Participation, Major Facility Review Permit Issuance*, approved by EPA as meeting the public participation provisions of 40 C.F.R. § 70.7(h), provides for notice and comment procedures that the District must follow when proposing to issue any major facility review permit. The public notice, which shall be published in a major newspaper in the area where the facility is located, shall identify, *inter alia*, information regarding the operation to be permitted, any proposed change in emissions, and a District source for further information. District Regulation 2-6-419, *Availability of Information*, requires the contents of the permit applications, compliance plans, emissions or compliance monitoring reports, and compliance certification reports to be available to the public, except for information entitled to confidential treatment.

Petitioner fails to demonstrate that the District did not process the permit in accordance with public participation requirements. The District duly published a notice regarding the proposed initial issuance of the permit. The notice, *inter alia*, referenced a contact for further information. The permit application, compliance plan, emissions or compliance monitoring reports, and compliance certification reports are available to the public through the District's Web site or in the District's files, which are open to the public during business hours. Petitioner admits that it ultimately obtained the compliance information it sought, albeit later than it wished. Petitioner fails to show that the perceived delay in receiving requested documents resulted in, or may have resulted in, a deficiency in the Permit. Therefore, EPA denies the Petition on this issue.

IV TREATMENT, IN THE ALTERNATIVE, AS A PETITION TO REOPEN

As explained in the Procedural Background section of this Order, EPA received and dismissed a prior petition ("2003 OCE Petition") from this Petitioner on a previous version of the Permit at issue in this Petition. EPA's response in this Order to issues raised in this Petition that were also included in the 2003 OCE Petition also constitutes the Agency's response to the 2003 Petition. Furthermore, EPA considers the Petition validly submitted under CAA section 505(b)(2). However, if the Petition should be deemed to be invalid under that provision, EPA also considers, in the alternative, the Petition and Order to be a Petition to Reopen the Permit and a response to a Petition to Reopen the Permit, respectively.

V CONCLUSION

For the reasons set forth above, and pursuant to section 505(b)(2) of the Clean Air Act, I deny in part and grant in part OCE's Petition requesting that the Administrator object to the Valero Permit. This decision is based on a thorough review of the draft permit, the final Permit issued December 16, 2004, and other documents pertaining to the issuance of the Permit.

MAR 1 5 2005

Date

Stephen L. Johnson
Acting Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

August 2, 2005

Mr. Mohsen Nazemi
Assistant Deputy Executive Officer
Engineering and Compliance Division
South Coast Air Quality Management District
21865 East Copley Drive
Diamond Bar, CA 97165-4182

Re: EPA Review of the Proposed Title V Permit for ExxonMobil (Facility ID 80089)

Dear Mr. Nazemi:

Thank you for the opportunity to review the proposed title V permit for the ExxonMobil Petroleum Refinery (Facility ID 80089) in Torrance, CA.

As you are aware, SCAQMD initially submitted a proposed title V permit to EPA for this facility in February 2003. EPA provided comments in response to the District's proposal, but SCAQMD did not issue a final permit to the facility. On May 6, 2005, SCAQMD transmitted a revised draft permit to EPA for review, with responses to EPA's 2003 comments. On June 16, SCAQMD formally transmitted a proposed permit to EPA for a formal 45-day review period. As stated in the District's letter, EPA's 45-day review period began on June 20, 2005. EPA's 45-day review period ends on August 3, 2005.

On August 1, 2005, EPA sent preliminary comments to SCAQMD. Per an August 2, 2005 letter from SCAQMD, we understand that SCAQMD will withhold issuance of a final title V permit for this facility for 30 days to allow time to resolve the issues identified in the August 1, 2005 letter to the mutual satisfaction of EPA and SCAQMD.

If, upon issuance of the final permit by SCAQMD, EPA finds that the permit does not satisfy the requirements for title V permits under 40 C.F.R. Part 70 and the District's title V program, EPA retains the authority to reopen the permit for ExxonMobil under 40 C.F.R. §70.7(g)(1).

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Again, we appreciate the opportunity to review the proposed permit, and we look forward to working with you and your staff in the coming weeks to finalize an initial title V permit for ExxonMobil. Please do not hesitate to contact me at (415) 972-3974, or Kathleen Stewart (415) 947-4119 and Joseph Lapka (415) 947-4226 of my staff with any questions you may have on our comments.

Sincerely,

Gerardo C. Rios
Chief, Air Permits Office

cc: Barbara Baird, SCAQMD
Carol Coy, SCAQMD
Hamed Mandilawi, SCAQMD
Pang Mueller, SCAQMD
Tran Vo, SCAQMD
Penny Wirsing, ExxonMobil

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

August 1, 2005

Pang Mueller
Senior Manager
Refinery, Energy and RECLAIM Administration
South Coast Air Quality Management District
21865 East Copley Drive
Diamond Bar, CA 97165-4182

RE: Preliminary EPA Comments on the Proposed Title V Permit for ExxonMobil

Dear Ms. Mueller:

The purpose of this letter is to provide the South Coast Air Quality Management District (SCAQMD) with EPA's preliminary comments on the proposed title V permit for the ExxonMobil refinery in Torrance, CA (Facility ID 80089).

As you are aware, SCAQMD initially submitted a proposed title V permit to EPA for this facility in February 2003. EPA provided comments in response to the District's proposal, but SCAQMD did not issue a final permit to the facility. On May 6, 2005, SCAQMD transmitted a revised draft permit to EPA for review, with responses to EPA's 2003 comments. On June 16, SCAQMD formally transmitted a proposed permit to EPA for a formal 45-day review period. As stated in the District's letter, EPA's 45-day review period began on June 20, 2005. EPA's 45-day review period ends on August 3, 2005.

We appreciate the opportunity to review the most recently proposed permit, and are providing our initial comments in the attached document. We look forward to working with you and your staff to address these issues in the coming week. EPA will provide SCAQMD with a final comment letter by the end of our 45-day review period.

Please do not hesitate to contact me at (415) 972-3974, or Kathleen Stewart (415) 947-4119 and Joseph Lapka (415) 947-4226 of my staff with any questions you may have on our comments. We will be available to spend as much time as needed discussing these issues with you between now and the end of our review period.

Sincerely,

Gerardo C. Rios
Chief, Air Permits Office

Printed on Recycled Paper

Enclosures (2)

cc: Barbara Baird, SCAQMD
Carol Coy, SCAQMD
Hamed Mandilawi, SCAQMD
Mohsen Nazemi, SCAQMD
Tran Vo, SCAQMD
Penny Wirsing, ExxonMobil

Attachment 1

PRELIMINARY EPA COMMENTS
ExxonMobil (Facility ID 800089)
SCAQMD Proposed Permit

August 1, 2005

1. Statement of Basis

A Title V permitting authority must provide EPA with a "statement that sets forth the legal and factual basis for the draft permit conditions."[1] EPA can object to a proposed title V permit if the permitting authority does not provide enough information to allow a meaningful EPA review of whether the proposed permit is in compliance with the requirements of the Act.[2] In addition to providing EPA with a copy of the statement of basis, the permitting authority must also provide the statement of basis to "any other person who requests it." Thus, the statement of basis is an important document for the public's review of the proposed title V permit because it provides the permitting authority, the public, and EPA a record of the applicability and technical issues surrounding the issuance of the permit.

In recent years, EPA has provided guidance regarding what is necessary for a statement of basis. In a letter dated February 19, 1999 to Mr. David Dixon, Chair of the CAPCOA Title V Subcommittee, EPA Region 9 provided the following list of air quality requirements that should be considered when developing a statement of basis. This list was developed with CAPCOA input and served as guidance to the state permitting authorities about what is necessary for EPA review.

- additions of permitted equipment which were not included in the application;
- identification of any applicable requirements for insignificant activities or State-registered portable;
- equipment that have not previously been identified at the Title V facility;
- outdated SIP requirement streamlining demonstrations;
- multiple applicable requirements streamlining demonstrations;
- permit shields;
- alternative operating scenarios;
- compliance schedules;
- CAM requirements;

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[1] See 40 C.F.R. § 70.7(a)(5).

[2] See May 10, 1991 preamble to the Part 70 regulations at 56 FR 21750 and 40 C.F.R. § 70.8(c)(3)(ii).

- plant wide allowable emission limits (PAL) or other voluntary limits;
- any district permits to operate or authority to construct permits;
- periodic monitoring decisions, where the decisions deviate from already agreed-upon levels (e.g., monitoring decisions agreed upon by the district and EPA either through: the Title V periodic monitoring workgroup; or another Title V permit for a similar source). These decisions could be part of the permit package or could reside in a publicly available document.

In January, 2002, EPA issued three Orders in response to title V petitions in New York. Each Order addressed the statement of basis issue as presented in those petitions. *See In Re Albert Einstein College of Medicine of Yeshiva University*, Petition No. II-2000-01 (January 16, 2002); *In Re Action Packaging Corp.*, Petition No. II-2000-2 (January 16, 2002); *In Re Kings Plaza Total Energy Plant*, Petition No. II-2000-3 (January 16, 2002).

In addition, in a January 7, 2002 *Federal Register* Notice of Deficiency (NOD) for the State of Texas' part 70 program, EPA stated that the state's part 70 program lacked any regulatory requirement for a statement of basis, and that the permits issued by Texas did not include a statement of basis. In describing the statement of basis requirements, EPA said, "a statement of basis should include, but is not limited to, a description of the facility, a discussion of any operational flexibility that will be utilized at the facility, the basis for applying the permit shield, any federal regulatory applicability determinations, and the rationale for the monitoring methods selected."

Also, EPA Region 5 issued a letter shortly before the Texas NOD was published, dated December 20, 2001, to the state of Ohio that provided guidelines to the state on the content of an adequate statement of basis. The letter from Region 5 recommends the same five (5) elements quoted above from the Texas NOD. In addition, however, the Region 5 letter also recommends, in more detail, the following elements of a statement of basis: 1) monitoring and operational restrictions requirements; 2) applicability and exemptions; 3) explanation of any conditions from previously issued permits that are not being transferred to the title V permit; 4) streamlining requirements; and 5) certain factual information as necessary.

Finally, on May 24, 2004, the EPA Administrator signed an order granting in part a petition requesting the EPA to object to the title V permit for the Los Medanos Energy Center. In relevant part, the petitioner alleged that the Los Medanos permit lacked a statement of basis, and that, without a statement of basis it is virtually impossible for the public to evaluate the periodic monitoring requirements (or lack thereof). In granting the petition on this issue, the Administrator of the EPA concluded that, taken together, the existing guidance on statements of basis outlined above provide a good road map as to what should be included in a statement of basis:

> *Each of the various guidance documents, including the Texas NOD and the Region V and IX letters, provide generalized recommendations for developing an adequate statement of basis rather than "hard and fast" rules on what to include*

in any given statement of basis. Taken as a whole, these recommendations provide a good road map as to what should be included in a statement of basis considering, for example, the technical complexity of the permit, the history of the facility, and any new provisions, such as periodic monitoring conditions, that the permitting authority has drafted in conjunction with issuing the title v permit. See In the Matter of Los Medanos Energy Center at 10-11 (May 24, 2004).

EPA Region 9 has relied on the above guidelines and the EPA Administrator's position, as outlined in the Los Medanos Petition, in reviewing the adequacy of the statement of basis for the ExxonMobil permit. Specific deficiencies are identified in comments 2-14, where applicable. See the attached EPA version of the statement of basis for further suggestions on how to improve the statement of basis.

2. Multiple NOVs

EPA's Part 70 regulations require a compliance schedule for "applicable requirements for sources that are not in compliance with those requirements at the time of permit issuance." 40 CFR §§70.6(c)(3), 70.5(c)(8)(iii)(C). Consistent with these requirements, EPA has stated that a compliance schedule is not necessary if a violation is intermittent, not on-going, and has been corrected before the permit is issued. *See In the Matter of New York Organic Fertilizer Company*, Petition Number II-2002-12 at 47-49 (May 24, 2004).

EPA has also stated that the permitting authority has discretion not to include in the permit a compliance schedule where there is a pending enforcement action that is expected to result in a compliance schedule (i.e., through a consent order or court adjudication) for which the permit will be eventually reopened. *See In the Matter of Huntley Generating Station*, Petition Number II-2002-01, at 4-5 (July 31, 2003); see also In the Matter of Dunkirk Power, LLC, Petition Number II-2002-02, at 4-5 (July 31, 2003).

SCAQMD has attached the following compliance-related documents to the revised statement of basis for ExxonMobil, sent to EPA on June 1, 2005:

- Summary Report of Violations (May 2002-May 2005);
- Summary of Breakdown Reports (May 2002-May2005); and
- Variances and Abatement Orders (Cases Filed since January 1, 2000 and Cases Filed Prior to January 1, 2000 with Pending Compliance Dates)

According to these documents, SCAQMD has issued several Notices of Violation (NOVs) to the ExxonMobil facility in the past five years. Some of these NOVs are, as of yet, pending legal action. Additionally, SCAQMD has indicated that ExxonMobil is currently operating out of compliance with Condition 4 of Section E of the permit, which states: The operator shall not use equipment identified in this facility permit as being connected to air pollution control equipment unless they are so vented to the identified air

pollution control equipment which is in full use and which has been included in this permit." SCAQMD has included Condition I1.1 in the permit, requiring the source to comply with all requirements of District Variance Case No. 1183-384, dated February 16, 2005. This condition is included in the permit pursuant to Rule 3004(a)(10)(C). Rule 3004(a)(10)(C) requires:

> *For facilities that are not in compliance with all applicable regulatory requirements at the time of permit issuance or permit renewal, a requirement to comply with all requirements of an alternative operating condition, variance or order for abatement issued by the District Hearing Board. The permit shall include a compliance schedule of remedial measures, including an enforceable sequence of actions with milestones, to be taken by the owner or operator to achieve compliance. This compliance schedule shall resemble and be at least as stringent as that contained in any:*
>
> *(i) Judicial consent decree or administrative order to which the source is subject; or*
>
> *(ii) Findings or decisions issued by the District Hearing Board as a result of any administrative proceeding concerning the source.*

SCAQMD has indicated in phone calls that it is expected that all NOVs will be settled by the time of permit issuance, and that the facility is currently in compliance with all rules and regulations. However, EPA feels that the current record calls for a discussion of the compliance history in the Statement of Basis. As currently drafted, the Statement of Basis on page 23 only contains the statement: "Currently we are not aware of any ongoing violation at the facility."

Recently, on March 15, 2005, EPA granted petitions to object to the issuance of the title V permits for the Tesoro and Valero refineries in the San Francisco Bay Area on the issue of multiple NOVs (*See In the Matter of Tesoro Refining and Marketing Co.*, Petition Number IX-2004-06, at 14-16, and *In the Matter of Valero Refining Company*, Petition Number IX-2004-07, at 14-17). In requiring the District to reopen the permits to either incorporate compliance schedules in the permits or to provide a more complete explanation for its decision not to do so, the EPA Administrator states:

> *The District's statements in the permitting record...create the impression that no NOVs were pending [at the time of permit issuance]. Although the District acknowledges that there have been "recent violations," the District fails to address the fact that it had issued a significant number of NOVs to the facility and that many of the issued NOVs were still pending. Moreover, the District provides only a conclusory statement that there are no ongoing or recurring problems that could be addressed with a compliance schedule and offers no explanation for this determination. The District's statements give no indication that it actually reviewed the circumstances underlying recently issued NOVs to determine whether a compliance schedule was necessary. The District's mostly generic statements as to the refinery's compliance status are not adequate to support the*

District's decision that no compliance schedule was necessary in light of the NOVs.

Though there are fewer NOVs for the ExxonMobil facility than for Tesoro or Valero, we find that the situations are significantly similar, and that the conclusion reached for the Tesoro and Valero petition orders are relevant to the ExxonMobil permit. Additionally, the February 19, 1999 letter issued by EPA Region 9 to Mr. David Dixon, Chair of the CAPCOA Title V Subcommittee referred to in Comment 1, above, included compliance schedules as among the items that should be considered in drafting a statement of basis.

In order for the ExxonMobil permit to be in compliance with title V (40 CFR §§70.6(c)(3), 70.5(c)(8)(iii)(C)), and to be consistent with previous guidance, SCAQMD must discuss the need for a compliance schedule for any outstanding NOVs at time of permit issuance; if a compliance schedule for outstanding NOVs is not needed, then the statement of basis should clearly discuss why no compliance schedule is needed. Additionally, SCAQMD should analyze the NOVs to determine whether there is a pattern of recurring noncompliance that should be addressed with a compliance schedule. As with outstanding NOVs, any conclusion that no compliance schedule is necessary should be documented in the statement of basis.

The statement of basis should also discuss the noncompliance with Condition 4 of Section E, and should describe what actions, including milestones, will be taken by ExxonMobil in order to return to compliance with the permit. Finally, Condition I1.1 should be revised to meet the requirements of Rule 3004(a)(10)(C), which requires that the permit include a compliance schedule of remedial measures, including an enforceable sequence of actions with milestones, to be taken by the owner or operator to achieve compliance. As proposed, Condition I1.1 simply requires the source to comply with the District Variance of February 16, 2005, but does not contain, as required by Rule 3004 and 40 C.F.R §§ 70.6(c)(3), 70.5(c)(8)(iii)(C), a compliance schedule of remedial measures with milestones. The permit should specifically state what steps ExxonMobil will take to return to compliance, and the dates by which these steps will be accomplished.

3. NSPS Subpart J Requirements for Flares, Thermal Oxidizers, and Incinerators

A. Applicability
Units C891, C892, D898, D899, C1558, C626, C686, C687

Units C891, C892, D898, D899, and C1558 are flares (D898 and D899 are tank flares). Unit C626 is a tail gas incinerator, and units C686 and C687 are direct gas-fired incinerators. All of these units combust refinery fuel gas, as that term is defined in NSPS Subpart J. If these units were built or modified after June 11, 1973, then NSPS Subpart J should be included as an applicable requirement in the permit. Because of common confusion over how NSPS Subpart J applies to

certain flares, thermal oxidizers, and incinerators, please discuss applicability of NSPS Subpart J to these units in the statement of basis. If all of these units were constructed prior to June 11, 1973, and have not been modified since, then a simple statement regarding date of construction/modification would suffice[1].

Please note that in both the January 7, 2002 NOD for the State of Texas and in the December 20, 2001 letter issued by EPA Region 5 to the State of Ohio, EPA indicated that a statement of basis should discuss any federal regulatory applicability determinations. Additionally, in the March 15, 2005 Orders regarding the title V permits for Chevron, ConocoPhillips, Tesoro, and Valero, EPA consistently required the Bay Area Air Quality Management District to document applicability determinations in the statement of basis. See, for instance, *In the Matter of Tesoro Refining and Marketing Co.*, Petition Number IX-2004-06, at 6, 7, and 43.

B. Monitoring for the H2S/SO2 limit
Units C894, C951, and C952

Unit C894 is a flare. The permit indicates that this flare is subject to NSPS Subpart J. However, the permit does not require the use of a representative continuous H2S monitor under 40 CFR §60.105(a)(4), nor does the statement of basis explain why no monitoring has been included in the permit. As proposed, the permit does not appear to contain all applicable requirements, as required by 40 C.F.R §70.6(a)(1). SCAQMD should either add the monitoring pursuant to 40 CFR §60.105(a)(3) or (4), or explain in the statement of basis any rationale for not requiring such monitoring.

Unit C951 is a tail gas incinerator, and unit C952 is a thermal oxidizer. The permit indicates that these units are subject to the H2S limit of NSPS Subpart J. Permit condition D82.1 requires ExxonMobil to install and maintain a continuous emissions monitoring system (CEMs) to measure SOx concentration, in ppm. However, the regulatory basis for this condition is SIP Rule 2011, Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions. Please add NSPS Subpart J as an underlying regulatory basis for this

[1] Please note that this information is not readily available to EPA as we review the permit, nor would this information be readily available to the public. While SCAQMD has included engineering evaluations in a CD attached to the statement of basis, the statement of basis, under the "Construction and Permitting History" section, states: "To facilitate review of the facility's construction and permitting history, a complete copy of the most recent Engineering Evaluations for each permitted piece of equipment at the refinery is included..." In other words, if a piece of equipment has gone through modification since initial construction, we would only have the engineering evaluation for the most recent modification available to review, which may not have the information we need to review applicability determinations.

For instance, in trying the review whether NSPS Subpart J should apply to flare C891, we have looked to the engineering evaluation provided in the CD attached to the statement of basis. The permit only provides one application number for this flare, A/N 383365. This application was submitted in 2001, and is for a modification, rather than initial construction. The engineering evaluation accompanying this application does not indicate the date of construction, nor does it discuss NSPS Subpart J applicability. Important questions to have answered in the statement of basis include: When was this unit constructed? If it was constructed after June 11, 1973, why isn't it subject to NSPS Subpart J? If it was constructed before June 11, 1973, how does the 2002 modification that is the subject of A/N 383365 affect applicability of NSPS Subpart J?

condition so that it is clear that this CEMs must meet the requirements of the NSPS (see Comment 12, below).

4. NSPS QQQ

A. NSPS Subpart QQQ is an applicable requirement for several emission units at the facility. The Subpart QQQ requirements appear to be imposed on the facility exclusively by subpart-level references in conditions H23.5 and H23.18. This level of detail makes it difficult to determine what specific requirements apply to each unit. For example, 60.692-3 (Standards: Oil-water separators) requires a closed vent system and control device for each separator tank or piece of auxiliary equipment with a certain design capacity. Because the design capacity of a unit is not always apparent, it is difficult to tell by looking at the permit whether this requirement applies to a given unit. The oil-water separator (D680) is required by Condition E336.8 to be connected to the wastewater air pollution control system. However, that requirement is tagged only with the District's BACT rule so it is still unclear whether the incinerators are actually required by the NSPS.

Control devices required pursuant to 40 CFR 60.692-3(b) must meet a specific control efficiency or operate with a specified minimum residence time and temperature. The permit is lacking control requirements that satisfy the NSPS but because of the inadequate level of detail in the permit, it is not possible to determine whether the requirements are not applicable or if their absence is due to an oversight by the District. In an attempt to resolve this issue, EPA asked the District via e-mail to clarify whether any emission units at the facility were subject to the control requirements under 40 CFR 60.692-3(b). The District responded by indicating that it should have the information within a few days. The District's own inability to determine which requirements apply to the facility by simply looking at the permit reinforces the notion that the permit lacks an adequate level of detail with respect to this regulation.

The example discussed above is not the only instance in which clarification is needed. In addition to the standards of 60.692-2 and 60.692-3, the NSPS contains alternative standards that may be used for individual drain systems, oil water separators, slop oil tanks, storage vessels, and other auxiliary equipment. In cases where a regulation contains multiple compliance options, the permit must clearly indicate which compliance option the facility has selected. If the facility desires the flexibility to use multiple options, any alternatives should be incorporated into the permit as alternative operating scenarios and the Permittee should maintain a log to record which option is utilized at any given time. For guidance on the use of alternative operating scenarios, the District is referred to the May 20, 1999 letter from John Seitz to Mr. Robert Hodanbosi and Mr. Charles Lagges regarding title V interface issues.

To resolve this issue, the District should provide a detailed discussion of the applicability of Subpart QQQ in the statement of basis and the requirements of Subpart QQQ must be incorporated into the permit in great enough detail to determine which specific requirements apply to each affected emission unit. The District is reminded that it may still be appropriate to incorporate certain requirements into the permit by reference to Subpart QQQ. However, any references used must be specific enough to define how the applicable requirement applies to each unit at the facility and provide for practical enforceability of the regulation or applicable requirement. For a more complete discussion about the use of incorporation by reference, the District is referred to EPA's *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program*, dated March 5, 1996.

B. If a control device is required for the oil water separator and any auxiliary equipment pursuant to 60.692-3(b), the permit appears to lack the emission standards discussed above and other Subpart QQQ requirements. If the District finds that a control device is required, the following should be added to the permit at a minimum:

   a. a condition requiring 95% control OR a minimum residence time and temperature of 0.75 seconds and 1,500 degrees F, respectively; and
   b. a condition imposing the 500 ppm limit on the closed vent system pursuant to 60.692-5(e)(1).

   The NSPS contains additional operational requirements for equipment with control devices such as the requirement to install a flow indicator pursuant to 60.692-5(e)(3) and the requirement to install a temperature monitoring device and continuous recorder pursuant to 60.695(a)(1). EPA notes that while the District may choose to incorporate these requirements into the permit by reference, the permit should still be clear about which specific requirements apply to each affected emission unit or control device.

C. In previous conversations regarding this permit, the District indicated that the "drain system component" (D1907) identified in the equipment list includes the refinery wastewater system in its entirety. This generic grouping of individual wastewater system components may make it difficult for District and EPA enforcement personnel to determine if the refinery is in compliance with the regulation, which contains standards for individual drains, junction boxes, and sewer lines. To address this issue, EPA recommends that the District provide a detailed description of the refinery wastewater system in the statement of basis. EPA notes that SIP Rule 1176(d)(2)(C) requires the refinery to submit to the District a complete list of drain system components identifying the total number, individual location, and type of control. The District should consider summarizing this information in the statement of basis or including the refinery's Rule 1176 compliance plan as an attachment to the statement of basis.

D. It is unclear why the skim oil/sour water sumps (D630, D638) are not subject to the requirements of NSPS Subpart QQQ. The District should review the applicability of the NSPS with respect to these devices and impose the requirements of Subpart QQQ on them or explain in the statement of basis why the NSPS is not applicable.

E. For devices D1428 and D1437, it is unclear what the term "recovered oil" refers to and whether or not the recovered oil meets the definition of "slop oil" under NSPS Subpart QQQ. The District should provide an applicability determination for these sources in the statement of basis and incorporate any applicable Subpart QQQ requirements into the permit.

5. SIP Rule 1176

A. Pursuant to Rule 1176(e)(2)(A) sumps and wastewater separators must be provided with (i) a floating cover, (ii) a fixed cover and closed vent system vented to a control device as specified in paragraph (e)(6), or (iii) an alternative control measure approved in writing by the EO. The permit is unclear about how ExxonMobil is required to comply with this requirement. For example, page 82 of Section D only indicates that device D680 (oil water separator) is "covered;" it does not say whether the cover is a floating cover or a fixed cover. Condition E336.8 of the permit further states that this device must be directed to the air pollution control system.

Although one might deduce that the cover mentioned on page 82 and the control device referred to in Condition E336.8 constitute a system that is meant to comply with Rule 1176(e)(2)(A)(ii), the permit does not establish a clear compliance obligation for the source. Especially in situations such as this where a rule offers more than one compliance option, the permit must be clear about which option the Permittee has selected. In the present case, the permit could benefit from a condition that explicitly requires device D680 to be equipped with a fixed cover and closed vent system that is vented to the control system serving the wastewater treatment system. In the alternative, at a minimum, the District should tag Condition E336.8 with a citation to Rule 1176(e)(2)(A)(ii) to indicate that the control system is in fact used to comply with the wastewater separator requirements of the rule. The District should follow the same procedure for other sumps and wastewater separators at the facility that are subject to the requirements of Rule 1176(e)(2).

B. As stated above, a control device that is used to comply with sump and separator requirements of Rule 1176(e)(2)(A)(ii) must meet the requirements of paragraph (e)(6) of the same rule. Paragraph (e)(6) requires that control devices either: (A) achieve a control efficiency of 95 percent or greater, as determined by an annual performance test; (B) not emit VOC emissions greater than 500 ppm above background levels, as determined by monthly monitoring; or (C) achieve a level

of control determined by the Control Officer to be equivalent to those specified in subparagraphs (A) or (B). In telephone conversations on July 27 and July 29, 2005, the District explained that its interpretation of the rule allows facilities to switch between compliance methods at will without specifying in advance which method will be used. The District further stated that it would require a finding of simultaneous non-compliance with the requirements of paragraphs (e)(6)(A) and (e)(6)(B) before it could issue a notice of violation for non-compliance with the air pollution control device requirements of Section (e)(6). While EPA gives the District deference in interpreting its own rule, the District has an obligation to issue a permit that assures compliance with all applicable requirements. The current permit does not do so with respect to Rule 1176(e)(6) because it only contains general references to the rule and does not establish a clear compliance obligation for the source.

EPA agrees that the Permittee is entitled to choose any compliance option allowed by the rule. EPA further agrees that the Permittee should have the flexibility to switch between compliance options as necessary. However, in cases where such flexibility is given to a facility, the permit must require that the Permittee demonstrate continuous compliance with either of the options at any given time. As an example of how the permit may not establish a clear compliance obligation for the source, the District is referred to the hypothetical situation in Attachment 2.

This issue can be resolved through the use of alternative operating scenarios pursuant to 40 CFR 70.6(a)(9). Specifically, the permit could require that the facility maintain a contemporaneous log of the scenario under which it is operating. In addition, the permit would explicitly state that the Permittee must be able to demonstrate compliance at any given time with the scenario identified in the log. For example, language similar to that below provides the Permittee with operational flexibility while assuring compliance with Rule 1176. The District may, of course, develop different language that accomplishes the same objective.

> *Air Pollution Control devices used as a means for complying with Rule 1176(e)(2) shall meet either of the requirements in subparagraphs 1176(e)(6)(A) or 1176(e)(6)(B). Contemporaneously with making a change from one method of compliance to another, the Permittee shall record in a log at the facility a record of the scenario under which it is operating. At all times, the Permittee must maintain source test results or monthly monitoring records, as appropriate, that demonstrate compliance with the chosen option.*

C. Rule 1176(g)(1)(B) states that any operator using an APC device as a means of complying with the rule shall maintain records of system operation or maintenance that will demonstrate proper operation and compliance of the APC device during periods of emission producing activities. Because the rule is not

specific about which records must be maintained, that information should be stated in the permit. For example, the permit should say what specific records are required during the times that the Permittee chooses to comply with the 95% control requirement under 1176(e)(6)(A). For this purpose, EPA recommends maintaining records that demonstrate compliance with a minimum temperature and residence time that are shown to achieve 95% control. EPA notes that Condition C8.1 already requires the Permittee to maintain the incinerator temperature above 1200 degrees F. Provided that this temperature provides 95% control, the District could address this issue by tagging Condition C8.1 with a citation to Rule 1176 and adding a residence time requirement.

D. For the control of drain system components (DSCs), Rule 1176(e)(7) requires petroleum refineries to comply with the additional requirements of either subparagraph (e)(7)(A) or (e)(7)(B) and it further requires the Permittee to notify the District of its choice. The proposed permit does not state with which compliance option the Permittee is required to comply. The permit lists only four conditions for the drain system components under Process 14 and none of them address this provision of the rule. The District should add a condition to the Permit requiring compliance with the option selected by ExxonMobil.

E. It is unclear why the vacuum truck wash out sump (D1671) and skim oil/sour water sump (D630) are not subject to the requirements of Rule 1176. Pursuant to Rule 1176(e)(2), sumps must be equipped with a floating cover, a fixed cover and closed vent system routed to a control device, or an approved alternative control measure. The District should add the appropriate control, monitoring, and recordkeeping requirements to the permit for these sources or explain in the statement of basis why they are not subject to the requirements under Rule 1176.

F. Petroleum refineries are required to prepare and submit a compliance plan pursuant to Rule 1176(d)(2). However, a plan for Rule 1176 is not included in the list of approved plans in Section I of the permit. The District should reference the plan in Section I or explain its absence in the statement of basis.

6. Basis for Tank Non-Applicability Determinations

There are dozens of tanks listed in the equipment list of Section D. Many of these are not subject to any requirements, except for the process-wide requirements of the Benzene Waste Operations NESHAP, Subpart FF (see comment 8, below). Tanks at a petroleum refinery can be subject to a wide number of regulations, depending on a number of different factors, such as size, capacity, physical properties of materials stored, and date of construction. While the table of tanks included in the statement of basis is somewhat useful, it does not provide information on tanks that are not subject to these commonly applicable requirements. The statement of basis should include an evaluation of the tanks and should explain why these tanks are not subject to any of the commonly applicable requirements.

For instance, for NSPS Subpart Kb, the District could include a table of non-applicability, with 3 columns that can potentially account for non-applicability: 1. Capacity in cubic meters, 2. Storage of Volatile Organic Liquids, and 3. Date of construction. With such a table, the District could indicate which tanks fall under each category of exemption. This would help the permit engineers, inspectors, and the source keep track of why these units are not subject, in case conditions change in the future. This is particularly important for units exempt under #2 above.

SCAQMD is referred to EPA's March 15, 2005 Petition Orders for Tesoro and Valero. In response to allegations by the petitioners that the Statements of Basis and the permits for these refineries lack adequate information to support the proposed exempt status for numerous tanks, the EPA Administrator found that:

> *[T]he majority of sources listed [as exempt] are identified in the December 1, 2003 statement of basis along with a citation from Regulation 2 describing the basis of the exemption. For the sources that fall within this category, EPA finds that the permit record supports the District's determination for the exempt status of the equipment. However, in reviewing the December 16, 2004 Statement of Basis, EPA noted that three of the sources listed [as exempt] are not included in the statement of basis with the corresponding citations for the exemptions. For these sources, the failure of the record to support the terms of the Permit is adequate grounds for objecting to the Permit.* See In the Matter of Tesoro Refining and Marketing Co., Petition Number IX-2004-06, at 43-44, and In the Matter of Valero Refining Company, Petition Number IX-2004-07, at 42-43)

In addition, both the January 7, 2002 NOD for the State of Texas, and the December 20, 2001 letter issued by EPA Region 5 to the State of Ohio indicate EPA's position that both applicability determinations and exemptions should be discussed in a statement of basis.

7. MACT Templates

A. MACT Subpart CC, Template #1, Miscellaneous Process Vents

Template #1 on page 1 of Section J of the permit contains the requirements for Miscellaneous Process Vents (MVPs) under MACT Subpart CC for petroleum refineries. In summary, for MVPs, MACT Subpart CC requires the operator to reduce organic Hazardous Air Pollutants (HAPs) by 98% or to 20 ppmv. MACT Subpart CC also contains recordkeeping and monitoring requirements for MVPs and associated control devices.

The equipment and condition list in section D of the permit indicates which process units are subject to the miscellaneous process vent provisions of MACT Subpart CC. Because SCAQMD commendably also lists how each device is

connected, we can also see which control device is being used to comply with the limits of MACT Subpart CC.

SCAQMD has indicated in phone calls that streams from miscellaneous process vents are introduced into the flame zone of heaters used to comply with the miscellaneous process vent requirements of MACT Subpart CC. MACT Subpart CC exempts such units from monitoring and source testing. It is our understanding that only heaters are used to comply with the requirements of MACT Subpart CC, and that vent streams are introduced into the flame zone of all of the heaters used to comply with MACT Subpart CC.

However, neither the permit nor the statement of basis discusses whether the vent stream is introduced directly into the flame zone of these heaters. Because this information is not readily available in the permit, we believe the statement of basis should at least discuss the applicability determination made with respect to the monitoring and source testing requirements for the heaters, pursuant to the guidance on applicability determinations for federal requirements contained in the January 7, 2002 NOD for the State of Texas, and the December 20, 2001 letter issued by EPA Region 5 to the State of Ohio.

Additionally, MACT Subpart CC template #1 includes requirements for flares, and for monitoring requirements for incinerators. These requirements do not appear to be applicable to any units at ExxonMobil. If these requirements are not applicable to any units then they should either be removed from the template, or else the permit should clearly indicate which parts of the template affected units are subject to. For instance, for heaters D232 and D234, the equipment list should indicate that the units are subject to MACT Subpart CC, template 1, parts 1 and 2c. For dryer D176, the permit should indicate that the unit is subject to MACT Subpart CC, template #1, parts 1, 2a, and 2d. While it is possible to piece together information to make an educated guess about which parts of MACT Subpart CC applies to each unit, title V is intended to clearly indicate what a source must do to comply with the Clean Air Act. This goal of title V benefits agency inspectors, the public, and the source.

8. Inadequate Level of Detail for Benzene Waste Operations NESHAP, Subpart FF and other applicable requirements

A. NESHAP FF

Process-wide permit condition P13.1 in Section D of the permit indicates that all of the equipment at 15 of the refineries' processes is subject to the requirements of NESHAP Subpart FF for Benzene Waste Operations. Section H of the permit also contains units subject to NESHAP Subpart FF. The equipment and conditions table for these units contain a 500ppm limit pursuant to Subpart FF and cites to

condition H23.24, which states that several specific units are subject to the applicable requirements of Subpart FF.

Nowhere in the permit does SCAQMD specifically describe which requirements of the NESHAP apply to which units, other than stating a 500ppm limit in the equipment and conditions table. This high level of detail for a standard with several different compliance options, and one that applies to so many different pieces of refinery equipment is inadequate. For example, for tanks, §61.343(a)(1) requires that the operator install a fixed roof and closed vent system that meet certain requirements, including a requirement that the cover and all openings be designed to operate with no detectable emissions as indicated by a reading of less than 500ppmv above background and that each opening be maintained in a closed, sealed position pursuant to §61.343(a)(1)(i)(B). However, §61.343(a)(1)(i)(B) does not apply to any opening if the cover and closed vent system operate such that the tank is maintained at a pressure less than atmospheric, provided that, among other things, the pressure is monitored continuously. As proposed, the permit is unclear as to whether ExxonMobil is complying with §61.343(a)(1)(i)(B), or §61.343(a)(1)(i)(C). This information is necessary for inspectors to be able to determine if ExxonMobil is complying with NESHAP FF requirements for tanks.

In the March 15, 2005 petition order regarding the title V permit for Tesoro Refining in Martinez, CA, EPA addressed a claim that Tesoro's permit failed to include the requirements of 40 C.F.R. Part 61, Subpart FF in any unit-specific tables, making the compliance obligations of the facility unclear. *See In the Matter of Tesoro Refining and Marketing Co.*, Petition Number IX-2004-06, at 8-9.

With the exception of two requirements for closed-vent systems and bypass lines in Table VII -CF, the requirements of NESHAP Subpart FF appeared in Tesoro's permit only through section-level references in a table of facility-wide applicable requirements. In the petition order, EPA determined that this method of incorporation by reference without regard to the individual emission units that are subject to the regulation rendered the permit unenforceable as a practical matter and incapable of meeting the Part 70 standard that it assure compliance with all applicable requirements.

While the ExxonMobil permit does indicate, at least in Section H of the permit, which units are subject to NESHAP FF, there is no indication of which parts of FF apply to which units, nor are the requirements spelled out in the permit. Given the complexity of the NESHAP and the refinery, it is impossible to determine from the permit how the regulation applies to ExxonMobil. This ambiguity and the applicability questions it creates render the permit unenforceable as a practical matter. In addition, the lack of detail detracts from the usefulness of the permit as a compliance tool for the facility.

SCAQMD should revise the permit requirements related to the NESHAP, keeping in mind EPA's guidance in *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program* (March 5, 1996). According to White Paper 2, at a minimum, a permit must explicitly state all emission limitations and operational requirements for all applicable emission units at the facility. Permitting authorities may reference the details of those limits and other requirements rather than reprinting them in permits provided that (i) applicability issues and compliance obligations are clear, and (ii) the permit contains any additional terms and conditions necessary to assure compliance with all applicable requirements. In all cases, references should be detailed enough that the manner in which the referenced material applies to the facility is clear and is not reasonably subject to misinterpretation. We recommend that SCAQMD develop a template similar to the templates used for MACT Subparts CC and UUU in Section J.

B. *Other applicable requirements*

Similarly, many other requirements in the ExxonMobil permit are included with such a broad level of detail that it is impossible to determine how they apply to the facility. See, for example, comment 5 above, regarding Rule 1176. SCAQMD should evaluate the rules cited in conditions H23.1 through H23.32 on pages 236-244 of Section D of the permit to determine if additional detail is needed, keeping in mind comments 4A and 8A.

9. Electrostatic Precipitators (ESPs)

A. Condition C12.1 requires continuous monitoring of the voltage, current, and spark rate at each ESP field for devices C165 and C166. The condition further states, "if the daily average ESP total power input falls below the level measured in the most recent source test which demonstrated compliance with the emission limit, a source test shall be performed within 90 days at the new minimum daily average ESP total power level." EPA has the following concern with this requirement:

- The 90-day source test requirement is triggered in part by operation outside of the parameter range measured during the most recent source test that "demonstrated compliance with the **emission limit**." The ESPs and the emission units they serve have multiple emission limits, some of which depend on process rates that may vary from source to source. As a result, the permit is unclear about which limits the minimum power value is based upon and when the source test requirement would actually be triggered.

To address this issue, the permit should explicitly state what the minimum power requirement is. EPA understands that the minimum power requirement has not yet been established and will be based on the results of an initial source test. Once that test has been conducted and the minimum power requirement has been

determined, the specific value should be added to the permit. Prior to the source test, the District should add a power requirement to the permit that is based on the design of the control devices.

B. Condition D29.3 requires that the Permittee conduct an annual performance test for PM emissions but it does not say with which limits the test is intended to demonstrate compliance. The District should clarify this by either referencing the rules or emission limits in the condition itself or by citing the underlying applicable requirements in the condition's tag. In addition, the condition states that the test should be performed at the outlet of the SCR. Please consider whether the District intended for the test to be conducted at the outlet of the ESP rather than the SCR.

10. Missing Periodic Monitoring for Generally Applicable Requirements

There are several units that are subject to the generally applicable requirements of Rules 401, 404, 405, 407, and/or 409. Rule 401 prohibits the discharge from any source of any air contaminant as dark or darker in shade as Ringelmann No. 1 for any period or periods aggregating more than three minutes in any one hour. Rule 404 limits particulate matter concentration from any source. Rule 405 limits solid particulate to no more than 0.23 kilogram per 907 kilograms of process weight. Rule 407 limits CO and sulfur emissions from any equipment, and Rule 409 limits the concentration of contaminants from the burning of fuel. Because these rules impose no monitoring of a periodic nature, 40 C.F.R. § 70.6(a)(3)(i)(B) specifies that the permit must contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit."

The statement of basis for the ExxonMobil permit states that the SCAQMD relied on the SCAQMD Periodic Monitoring Guidelines for Title V Facilities (1997), the CAPCOA/CARB/EPA Region IX Periodic Monitoring Recommendations for Generally Applicable Requirements in the SIP (1999), and the CAPCOA/CARB/EPA Region IX Recommended Periodic Monitoring for Generally Applicable Grain Loading Standards in the SIP: Combustion Sources (2001) for making periodic monitoring decisions. For many units in the permit there appears to be no periodic monitoring included for assuring compliance with the limits of these rules. Please note that the January 7, 2002 NOD for the State of Texas and the December 20, 2001 letter issued by EPA Region 5 to the State of Ohio indicate that periodic monitoring determinations should be discussed in the statement of basis. Additionally, EPA's petition orders for the Los Medanos Energy Center (May 24, 2004) and for the Chevron, ConocoPhillips, Tesoro, and Valero refineries (see Petition Numbers IX-2004-06 through 09) reiterate the need for periodic monitoring determinations to be included in a statement of basis (see, for instance, *In the Matter of Chevron Products Company*, Petition Number IX-2004-08, at 18-25).

A. No monitoring for compliance with Rule 401
Most units

Rule 401 is incorporated into the permit as a facility-wide condition, such that it applies to all emission units at the refinery. However, there is no monitoring specifically included in the permit to assure compliance with Rule 401. While a handful of units are subject to visible emissions (VE) monitoring, it is not clear whether this monitoring is pursuant to Rule 401, or to some other requirement, such as an NSPS (see comment 13). As such, it is unclear whether SCAQMD has made an active decision that all other units do not need to be monitored to assure compliance with Rule 401, or if the units subject to VE monitoring are simply required to be monitored pursuant to some other rule or requirement.

According to SCAQMD's 1997 Periodic Monitoring Guidelines, SCAQMD has grouped sources as either category I sources, which do not require periodic monitoring to assure compliance with Rule 401, and category II sources, which do require periodic monitoring for compliance with Rule 401. The permit would benefit from having a discussion of category I and II units in the statement of basis, as some periodic monitoring decisions remain unclear to EPA.

For instance, combustion equipment, exclusively landfill, digester, refinery or natural gas-fired, which never encounter dirty, oily, or contaminated materials and which do not require PM or PM10 control are grouped as category I sources for which no monitoring is needed. CO Boiler Unit C164 fires on natural gas, waste heat, and refinery gas, initially indicating that it is a category I source. The permit does not require any periodic monitoring to assure compliance with Rule 401. However, the permit indicates that this unit is hooked up to two electrostatic precipitators, indicating that this unit requires PM or PM10 control. If this unit does require PM or PM10 control, then it appears that the permit is missing periodic monitoring for compliance with Rule 401.

Also, SCAQMD's 1997 guidance includes fuel oil or gasoline fired IC engines as a category II source requiring periodic monitoring for compliance with Rule 401. The permit for IC engines D394, D1686, and D1786 indicates that these units fire on diesel fuel, however, no periodic monitoring is included in the permit to assure compliance with Rule 401. This appears to contradict the SCAQMD's 1997 guidance, and the statement of basis offers no insight as to the decision making employed by SCAQMD for these units. Similarly, incinerators are included as a category II source in the 1997 Guidance, but the permit does not include periodic monitoring for Rule 401 for incinerators, such as C686 and C687. Additionally, tanks storing solid material are also included as a category II source, however for many tanks the permit does not indicate what type of material is stored.

SCAQMD should discuss periodic monitoring decisions made for Rule 401 in the statement of basis, since as currently drafted, the permit does not clearly implement the guidelines of SCAQMD's 1997 Guidance.

B. *No monitoring for compliance with Rule 404*
Units D83, D84, D85, D120, D917, D918, D920, D269, D270, D949, D950, D367, D927, D928, D929, D930, D931, D1403, and D833

Units D83, D84, D85, D120, D917, D918, D920, D269, D270, D949, D950, D927, D928, D929, D930, D931, and D1403 are heaters and, according to the permit, are fired on natural gas and refinery gas. Unit D833 is an infrequently operated heater fired on natural gas and refinery gas. Unit D367 is a furnace at the hydrogen plant that fires on liquefied petroleum gas, natural gas, and refinery gas. The permit indicates that these units are all subject to the PM limits of Rule 404, however, the permit does not appear to include any periodic monitoring requirements to assure compliance with Rule 404 for these units, nor does the permit appear to justify the lack of periodic monitoring.

The SCAQMD's 1997 Guidelines recommend for all sources subject to Rule 404 that compliance be determined through the following:

- Engineering calculation by the use of appropriate emission factors,
- Equipment limitation,
- Process throughput limit and recordkeeping,
- Requirement to vent the equipment to a control device meeting the monitoring requirements in Appendix A.

The permit for these units does not appear to implement any of these measures. If engineering calculations were used please document this in the statement of basis.

The CAPCOA/CARB/EPA 1999 Recommendations only address periodic monitoring to evaluate compliance with grain loading standards with respect to stack and fugitive emissions from material handling units, not combustion sources. The 2001 Recommendations address certain types of combustion units - specifically, combustion units fired on natural-gas, landfill-gas, and digester-gas. The 2001 Recommendations do not specifically address combustion units that fire on refinery fuel gas or liquefied petroleum gas. The 2001 Recommendations note that periodic monitoring for source categories that are not included (such as refinery-gas fired combustion units) should be determined on a case-by-case basis.

Based on a review of the statement of basis, the permit, and the guidance documents relied on by South Coast in making periodic monitoring decisions, we believe that SCAQMD's apparent decision to not require periodic monitoring for these units for Rule 404 has not been justified. Please add appropriate periodic monitoring, or explain in the statement of basis why no monitoring is needed.

C. *No monitoring for compliance with Rule 405*
Units D57-D62, D86-D91; D129-D135 and D919

Units D57-D62, and D86-D91 are coke drums; Units D129-D135 and D919 are conveyors and screens. The permit indicates that these units are subject to the PM process weight limits of Rule 405; however, the permit neither includes periodic monitoring nor explains the lack of periodic monitoring for the PM process weight limits of this rule. Please add monitoring to the permit for these units, or explain in the statement of basis why none is needed.

D. *No monitoring for compliance with Rule 407- CO*
Units D367, D926, C891, C892, C894, and C1558

Unit D367 is a furnace at the hydrogen plant that fires on liquefied petroleum gas, natural gas, and refinery gas. Unit D926 is a turbine fired on butane, liquefied petroleum gas, natural gas, and refinery gas. Units C891, C892, C894, and C1558 are flares. The permit indicates that these units are subject to the CO limit of Rule 407. However, the permit neither includes periodic monitoring nor explains the lack of periodic monitoring for the CO limit for these sources.

The SCAQMD's 1997 Guidelines recommend the following gap-filling monitoring, testing, and/or recordkeeping for sources subject to the CO limit of Rule 407:

- None for equipment:
  - Where CO emissions are not expected; or
  - Subject to CO emission limits and requirements of source-specific rules in Regulation XI (e.g. Rule 1146, 1146.1)
- Equipment ≥ 10 million BTU/hr heat input rating:
  - CEMS for CO pursuant to 40 CFR Part 60 Appendix B & F; or
  - Performance test once every 5 years; or
  - Annual monitoring of exhaust stack for CO using an AQMD-approved portable analyzer; or
  - Parametric monitoring correlated with a performance test
- Other equipment: AQMD-approved portable CO analyzer once every 5 years

Neither the permit nor the statement of basis contains any analysis of the likelihood of these units emitting CO, nor does the permit indicate that these units are subject to the requirements of Rules 1146 or 1146.1.

The CAPCOA/CARB/EPA Periodic Monitoring Recommendations do not address monitoring for CO limits.

Based on a review of the statement of basis, the permit, and the guidance documents relied on by South Coast in making periodic monitoring decisions, we believe that SCAQMD's apparent decision to not require periodic monitoring for these units for the CO limits of Rule 407 has not been justified. Please add appropriate periodic monitoring, or explain in the statement of basis why no monitoring is needed.

E. *No monitoring for compliance with Rule 407- SOx*
Units D1943, D671, D653, D654, D1375, D644, D645, D1503, D1504, D1505, and D1507

Unit D1943 is a sulfur condenser and units D671 and D1375 are parts of sulfur pits. Units D653 and D654 are Amine contactor vessels. Units D644 and D645 are loading arms. Units D1503, D1504, D1505, and D1507 are holding tanks at the rail car loading rack. The permit indicates that these units are subject to the SOx limit of Rule 407. However, the permit neither includes periodic monitoring nor explains the lack of periodic monitoring for the SOx limit for these sources.

The SCAQMD's 1997 Guidelines recommend the following gap-filling monitoring, testing, and/or recordkeeping for sources subject to the SOx limit of Rule 407:

- None for equipment:
  - Where SOx emissions are not expected; or
  - Subject to SOx emission limits and requirements of source specific rules in Regulation XI; or
  - Burning fuels subject to fuel sulfur limits of Rules 431.1, 431.2 or 431.3 where no other sulfur containing material is introduced to the equipment or the process

- Equipment with high potential SOx emissions:
  - CEMS for SOx pursuant to 40 CFR Part 60 Appendix B & F; or
  - Performance test once every 5 years; or
  - Annual monitoring of exhaust stack for SOx using an AQMD-approved portable analyzer; or
  - Parametric monitoring correlated with a performance test

- Other equipment: AQMD-approved portable SOx analyzer once every 5 years

Neither the permit nor the statement of basis contains any analysis of the likelihood of these units emitting SOx, though a number of these units are located at the sulfur plants. Nor does the permit indicate that these units otherwise meet

the criteria for a no monitoring needed determination pursuant to the SCAQMD 1997 Guidelines.

The CAPCOA/CARB/EPA Periodic Monitoring Recommendations do not address monitoring for SOx limits.

Based on a review of the statement of basis, the permit, and the guidance documents relied on by South Coast in making periodic monitoring decisions, we believe that SCAQMD's apparent decision to not require periodic monitoring for these units for the SOx limits of Rule 407 has not been justified. Please add appropriate periodic monitoring, or explain in the statement of basis why no monitoring is needed.

F. *No monitoring for compliance with Rule 409*
Units D83, D84, D85, D120, D917, D918, D920, D269, D270, D949, D950, D367, D927, D928, D929, D930, D931, D1403, and D926

Units D83, D84, D85, D120, D917, D918, D920, D269, D270, D949, D950, D927, D928, D929, D930, D931, and D1403 are heaters and, according to the permit, are fired on natural gas and refinery gas. Unit D367 is a furnace at the hydrogen plant that fires on liquefied petroleum gas, natural gas, and refinery gas. Unit D926 is a turbine fired on butane, liquefied petroleum gas, natural gas, and refinery gas. The permit indicates that these units are all subject to the PM limits of Rule 409, however, the permit does not appear to include any periodic monitoring requirements to assure compliance with Rule 409 for these units, nor does the permit appear to justify the lack of periodic monitoring.

The SCAQMD's 1997 Guidelines recommend for all gaseous and liquid fueled sources subject to Rule 409 that compliance be determined by engineering calculations, the use of appropriate emission factors, and exhaust characteristics.

The CAPCOA/CARB/EPA 1999 Recommendations only address periodic monitoring to evaluate compliance with grain loading standards with respect to stack and fugitive emissions from material handling units, not combustion sources. The 2001 Recommendations address certain types of combustion units - specifically, combustion units fired on natural-gas, landfill-gas, and digester-gas. The 2001 Recommendations do not specifically address combustion units that fire on refinery fuel gas or liquefied petroleum gas. The 2001 Recommendations note that periodic monitoring for source categories that are not included (such as refinery-gas fired combustion units) should be determined on a case-by-case basis.

Based on a review of the statement of basis, the permit, and the guidance documents relied on by South Coast in making periodic monitoring decisions, we believe that SCAQMD's apparent decision to not require periodic monitoring for these units for Rule 407 has not been justified. Please add appropriate periodic monitoring, or explain in the statement of basis why no monitoring is needed. If,

pursuant to SCAQMD's 1997 Guidelines, engineering calculations can be used to justify that no periodic monitoring is necessary, please include the results of these calculations, and compare calculated emissions to allowable emissions under Rule 409. Any emission factors, exhaust characteristics, or other assumptions or inputs used to justify no periodic monitoring should be identified in the discussion.

11. Potentially Inadequate Periodic Monitoring for Generally Applicable PM Requirements

For most units where the permit does require periodic monitoring for Particulate Matter, the requirement is a source test once every 3 years. Because the regulatory basis for these monitoring requirements is listed as periodic monitoring pursuant to Rule 3004, the District's periodic monitoring rule, it is unclear if the monitoring requirements described are even intended to demonstrate compliance with the generally applicable PM limits, or if they are intended to demonstrate compliance with something else entirely (see comment 13, below). Assuming that the periodic monitoring for PM in the permit is intended to show compliance with the generally applicable PM limits, we are concerned that the monitoring required may be inadequate, depending on the type of gas the unit is firing on. For example, most of the combustion units at the refinery fire at least occasionally on refinery fuel gas. Depending on the sulfur content of the fuel, more frequent monitoring may be appropriate. Because the 2001 CARB/CAPCOA/EPA Periodic Monitoring Recommendations do not specifically address combustion units that fire on refinery fuel gas or liquefied petroleum gas, the conclusions drawn that no periodic monitoring is needed for units firing on certain types of gaseous fuels cannot be automatically extended to units firing on refinery gas. A case-by-case determination should be made, and should be documented in the statement of basis.

12. Missing Generally Applicable Requirements

Rules 401, 404, 405, and 407 should apply generally to almost all units at ExxonMobil; however, only Rule 401 is listed as a facility-wide applicable requirement in the permit (see Condition F9.1). It appears the Rule 407 SOx limits are missing from many combustion units that are listed as being subject to Rule 404, and to the CO limits of Rule 407. However, any combustion equipment that is expected to emit PM is also likely to emit SOx as well. The statement of basis should discuss the SCAQMD's applicability determinations for Rule 407. There are also relatively few units subject to the PM Process Weight limits of Rule 405. Process weight limits should be particularly relevant to any combustion unit for which the District is including Rule 404 PM limits as applicable requirements. SCAQMD has indicated in a conference call that Rule 405 limits only apply if there is a potential for solid PM emissions from a unit. The statement of basis should discuss this, and should describe the process used to determine which units that would be expected to emit PM subject to Rule 404, would not be expected to emit PM subject to Rule 405.

Please note also, Unit E1901 is used in the permit as a generic grouping of the refinery cooling towers. It is unclear why Rules 404 and 405 are not identified in the permits as applicable requirements for these sources. Furthermore, periodic monitoring may be necessary to assure compliance with the emission limits depending on the operational characteristics of each unit.

EPA recently addressed the issue of cooling tower monitoring for requirements such as these in response to public petitions concerning two petroleum refineries in the Bay Area. In brief, the Bay Area Air Quality Management District determined that generally applicable grain loading and solid particulate matter rules similar to SCAQMD Rules 404 and 405 applied to the cooling towers but that monitoring was not necessary to assure compliance because the calculated emissions were well below the regulatory limits. The District's decision was based on emission calculations that used operational data from the cooling towers and AP-42 emission factors. EPA found in some cases that the District's calculations adequately justified the absence of monitoring, particularly with respect to the grain loading standard due to the relatively high exhaust air flow rates from the cooling towers. However, with respect to the lb/hr solid particulate matter emission limit of BAAQMD Rule 6-311, EPA found that some of the cooling towers have the potential to exceed the emission limit and that periodic monitoring is necessary. Thus, EPA granted the petitions on this issue. *See In the Matter of Tesoro Refining and Marketing Co.*, Petition No. IX-2004-6, at 33-35, (March 15, 2005) and *In the Matter of Valero Refining Co.*, Petition No. IX-2004-07, at 34-36 (March 15, 2005).

The District's failure to identify Rules 404 and 405 as applicable requirements (or demonstrate that they are not applicable) and conduct a periodic monitoring evaluation represents a deficiency in the permit that must be corrected. To address this issue, the District should first identify Rules 404 and 405 as applicable requirements for the cooling towers or demonstrate in the statement of basis why the rules do not apply to these sources. In addition, the District should conduct a periodic monitoring evaluation and add monitoring to the permit as necessary, taking the petition orders into account.

13. Regulatory Basis for Periodic Monitoring

Often when the District uses its periodic monitoring authority under Part 70 to require monitoring to assure compliance with an applicable requirement, the only regulatory citation included in the permit condition is a citation to Rule 3004(a)(4), which is the provision in the District's title V program for periodic monitoring. While this tag technically satisfies the requirement of Part 70 that each permit state the regulatory basis for each condition, it is sometimes difficult to tell with which emission limit or standard the monitoring is intended to assure compliance. This is especially problematic in cases where an emission unit has more than one limit for a given pollutant because you can not always tell if the monitoring requirement is intended to assure compliance with one of the requirements or both. In addition to providing the citation to Rule 3004, EPA recommends that the District also cite the rule with the underlying emission limit or operational standard.

14. Rule 219 Exemptions

Section D, pages 148 and 149, of the permit indicates that several units are exempt under Rule 219 from the Regulation II requirement to obtain written permits for equipment, processes, or operations that emit insignificant amounts of air contaminants. However, we believe the permit does not provide an adequate explanation of how several units listed qualify for the exemptions of Rule 219. For the units listed below, the permit or the statement of basis should provide more information regarding the District's determination that these units are exempt under Rule 219. Note that the December 20, 2001 letter issued by EPA Region 5 to the State of Ohio discusses EPA's expectation that exemptions be discussed in a statement of basis. Please also refer to Comment #5 above for a discussion of EPA's March 15, 2005 Petition Orders as they relate to providing a discussion of exemptions in a statement of basis.

A. *Equipment E1904*
Coating equipment exemption

Equipment E1904 consists of coating equipment that is listed as exempt due to infrequent use or low emissions (see Section D, page 148). However, there is no indication of which specific exemption Equipment E1904 qualifies for under Rule 219(m). SCAQMD should provide an explanation of which provision under Rule 219(m) the equipment qualifies for and, if necessary, provide documentation to demonstrate that the equipment qualifies for the exemption. For example, if a unit is being exempted under 219(m)(6)(A), document that the emissions from the equipment is 3 lb/day or less, or 66 lbs/calendar month or less.

B. *Equipment E2020*
Laminating equipment exemption

Equipment E2020 consists of laminating equipment that is listed as exempt due to infrequent use or low emissions (see Section D, page 149). However, there is no indication of whether E2020 meets the requirements for exemption under Rule 219(m)(6). SCAQMD should provide documentation to demonstrate that the equipment qualifies for the exemption in Rule 219(m)(6). For example, if a unit is being exempted under 219(m)(6)(A), document that the emissions from the equipment is 3 lb/day or less, or 66 lbs/calendar month or less.

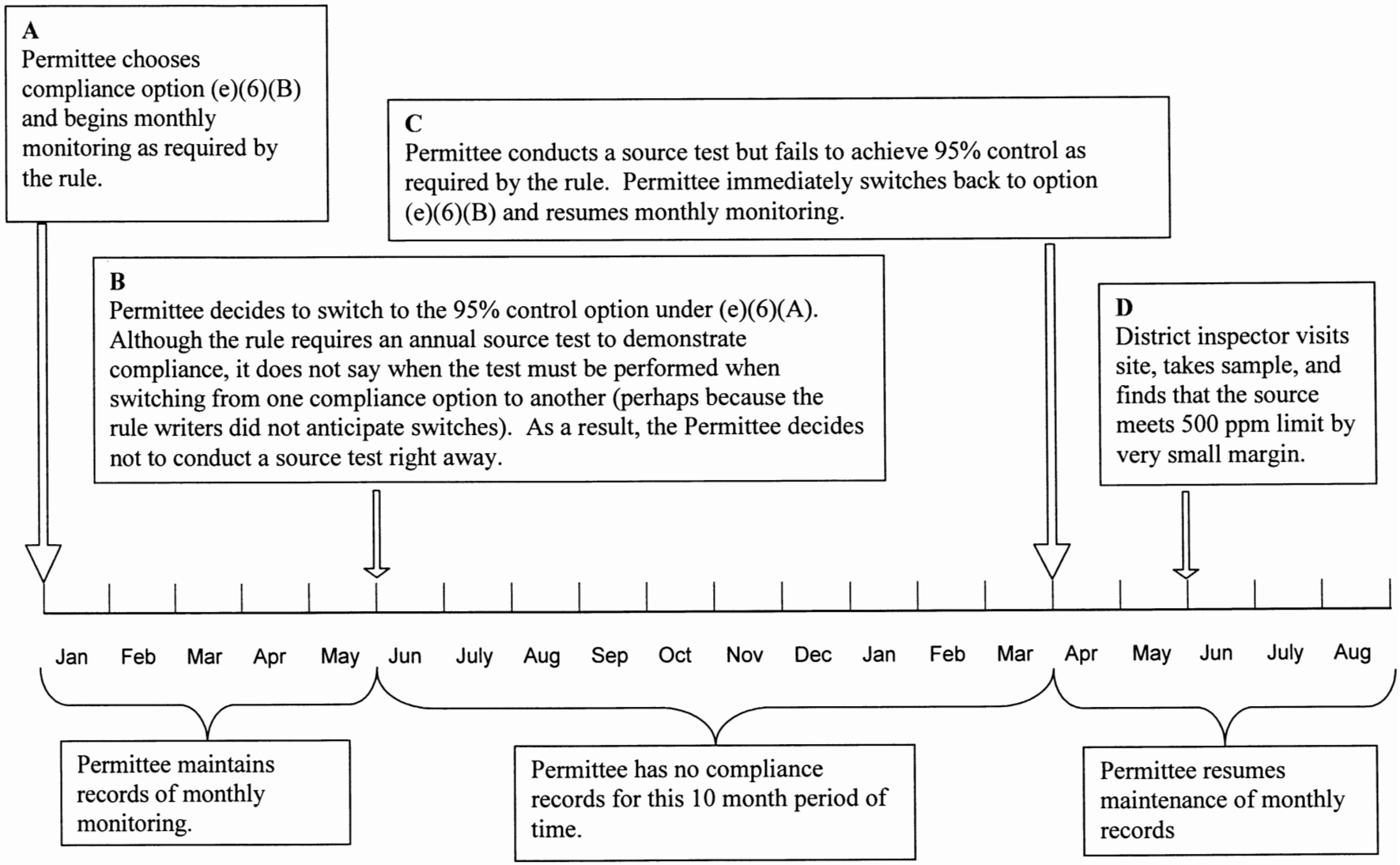
C. *Equipment E2022*
Cleaning equipment exemption

Equipment E2022 refers to cleaning equipment that is, according to the permit, exempt under Rule 219 (see Section D, page 148). However, there is no indication of which specific exemption E2022 qualifies for under Rule 219(p)(1) and whether E2022 meets the requirements for exemption under Rule 219(p)(1). SCAQMD should provide documentation to demonstrate that the equipment qualifies for the exemption in Rule 219(p)(1). For example, if a unit is being

exempted under 219(p)(1)(B)(ii), document that the emissions from the equipment is 3 lb/day or less, or 66 lbs/calendar month or less. Additionally, please verify that Equipment E2022 does not fall under any categories in Rule 219(p)(4), which would disqualify E2022 for an exemption.

Attachment 2:

Potential Compliance Problems Arising From Lack of Detail in Proposed Title V Permit With Respect to Rule 1176(e)(6)



The problem arises in this situation because although the rule requires an annual source test to demonstrate compliance with the 95% control requirement, it does not say when the source test must be conducted in the event the Permittee switches from one option to another. The Permittee's failure to conduct the test immediately upon the change in operation and its subsequent switch back to the

option under (e)(6)(B) results in a 10 month period of time in which it has no records that demonstrate compliance with either of the options. The fact that the facility failed the source test and just barely complied with the 500 ppm limit during the District's inspection creates uncertainty as to whether the facility was actually in compliance with the rule during the previous 10 month period. However, because the District inspector found the emissions to be slightly below the regulatory limit during its inspection, the District may have difficulty issuing an NOV to the Permittee for non-compliance with the rule even though the Permittee is not able to produce records that clearly demonstrate compliance.

The combination of the District's interpretation of the rule, the language of the rule itself, and the lack of detail in the permit fails to establish a clear compliance obligation for the source and could lead to a variety of situations like the one described above. While the District is entitled to its own interpretation of the rule, the District has an obligation to issue a permit that assures compliance with all applicable requirements. As it is currently written, the permit fails to do so with respect to the control requirements of Rule 1176(e)(6).

As previously stated, EPA agrees that the Permittee is entitled to choose any compliance option allowed by the rule and that it should have the flexibility to switch between compliance options as it desires. However, in such cases, the permit should contain an alternative operating scenario pursuant to 40 CFR 70.6(a)(9). The language suggested by EPA (copied below for the District's convenience) solves the problem in this hypothetical situation while still giving the Permittee the flexibility to switch control options whenever it chooses.

Suggested language:

> *Air Pollution Control devices used as a means for complying with Rule 1176(e)(2) shall meet either of the requirements in subparagraphs 1176(e)(6)(A) or 1176(e)(6)(B). Contemporaneously with making a change from one method of compliance to another, the Permittee shall record in a log at the facility a record of the scenario under which it is operating. At all times, the Permittee must maintain source test results or monthly monitoring records, as appropriate, that demonstrate compliance with the chosen option.*

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)
ONYX ENVIRONMENTAL SERVICES	)
	) ORDER RESPONDING TO PETITIONERS'
Petition number V-2005-1	) REQUEST THAT THE ADMINISTRATOR
CAAPP No. 163121AAP	) OBJECT TO ISSUANCE OF A STATE
Proposed by the Illinois	) OPERATING PERMIT
Environmental Protection Agency	)
	)

ORDER PARTIALLY DENYING AND PARTIALLY GRANTING
PETITION FOR OBJECTION TO PERMIT

On November 6, 2003, pursuant to its authority under the Illinois Clean Air Act Permitting Program ("CAAPP"), the Illinois Environmental Protection Act, 415 ILCS 5/39.5, title V of the Clean Air Act ("Act"), 42 U.S.C. §§ 7661-7661f, and United States Environmental Protection Agency's ("U.S. EPA") implementing regulations in 40 C.F.R. part 70 ("part 70"), the Illinois Environmental Protection Agency ("IEPA") published a proposed draft title V operating permit for Onyx Environmental Services ("Onyx permit"). Onyx Environmental Services ("Onyx") operates a hazardous waste combustor.

On February 18, 2004, U.S. EPA received a petition from the Sierra Club and American Bottom Conservancy ("Petitioners") requesting that U.S. EPA object to issuance of the Onyx permit, pursuant to section 505(b)(2) of the Act and 40 C.F.R. § 70.8(d).

Petitioners allege that the Onyx permit: (1) violates the Agency's commitments and obligations to address environmental justice issues; (2) lacks a compliance schedule and certification of compliance; (3) does not address modifications Onyx allegedly took that triggered New Source Review ("NSR") requirements; (4) is based on an eight-year old application; (5) lacks practically enforceable conditions; (6) contains a permit shield that broadly insulates it from ongoing and recent violations; (7) fails to include conditions that meet the legal requirements for monitoring; (8) does not contain a statement of basis; (9) does not require prompt reporting of violations; and (10) fails to establish annual mercury and lead limits.

U.S. EPA has reviewed these allegations pursuant to the standard set forth in section 505(b)(2) of the Act, which requires the Administrator to issue an objection if the petitioner demonstrates to the Administrator that the permit is not in compliance with the applicable requirements of the Act. *See also* 40 C.F.R. § 70.8(d); *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 333 n.11 (2nd Cir. 2002).

Based on a review of the available information, including the petition, the Onyx proposed permit, and the information provided by Petitioners, I grant the Petitioners' request in part and deny it in part for the reasons set forth in this Order.

STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act requires each state to develop and submit to U.S. EPA an operating permit program to meet the requirements of title V. U.S. EPA granted final full approval of the Illinois title V operating permit program effective November 30, 2001. 66 *Fed. Reg*. 62946 (December 4, 2001).

Sections 502(a) and 504(a) of the Act make it unlawful for major stationary sources of air pollution and other sources subject to title V to operate except in compliance with an operating permit issued pursuant to title V that includes emission limitations and such other conditions necessary to assure compliance with applicable requirements of the Act.

A title V operating permit program generally does not authorize permitting authorities to establish new substantive air quality control requirements (referred to as "applicable requirements") but does require permits to contain monitoring, recordkeeping, reporting, and other compliance requirements to assure compliance by sources with existing applicable requirements. One purpose of the title V program is to enable the source, U.S. EPA, states, and the public to better understand the applicable requirements to which the source is subject and to determine whether the source is meeting those requirements. *See* 57 Fed. Reg. 32250, 32251 (July 21, 1992). Thus, the title V operating permit program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document and that compliance with these requirements is assured. *Id.*

Section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 C.F.R. § 70.8(a), through the state title V programs, require states to submit all operating permits proposed pursuant to title V to U.S. EPA for review. U.S. EPA may comment on and object to permits determined by the Agency not to be in compliance with applicable requirements or the requirements of Part 70. If U.S. EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act, 42 U.S.C. §7661d(b)(2), and 40 C.F.R. § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of U.S. EPA's 45-day review period, to object to the permit. Section 505(b)(2) requires the Administrator to object to a permit if a petitioner demonstrates that the permit is not in compliance with the requirements of the Act, including the requirements of part 70 and the applicable implementation plan. Petitions must be based on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise the objection within the public comment period, or unless the grounds arose after the close of the public comment period. If the permitting authority has not yet issued the permit, it may not do so unless it revises the permit and issues it in accordance with section 505(c) of the Act, 42 U.S.C. § 7661d(c). However, a petition for review does not stay the effectiveness of the permit or its requirements if the permitting authority issued the permit after the expiration of U.S. EPA's 45-day review period and before receipt of the objection. If, in response to a petition, U.S. EPA objects to a permit that has been issued, U.S. EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 C.F.R. § 70.7(g)(4) or (5)(i) and (ii), and 40 C.F.R. § 70.8(d).

BACKGROUND

Onyx submitted to IEPA on September 7, 1995, an application for a title V permit for its hazardous waste combustor in Sauget, Illinois. IEPA issued a draft title V permit on June 6, 2003 and proposed a revised permit to U.S. EPA on November 6, 2003. The public comment period for the Onyx permit ended September 12, 2003. During the public comment period, IEPA received comments on the draft permit, including comments from the Petitioners dated September 11, 2003. U.S. EPA is reviewing and responding to the Petitioners' issues based on the November 6, 2003 proposed Onyx permit. U.S. EPA did not object to the proposed permit within its 45-day review period, which ended December 21, 2003.

February 19, 2004 was the deadline, under the statutory time frame in section 505(b)(2) of the Act, to file a petition requesting that U.S. EPA object to the issuance of the proposed Onyx permit. Petitioners submitted their request that U.S. EPA object to the issuance of the Onyx permit on February 18, 2004. Accordingly, U.S. EPA finds that Petitioners timely filed this petition.

ISSUES RAISED BY THE PETITIONERS

As noted previously, Petitioners allege that the permit does not meet the requirements of the Act for several reasons. Specifically, Petitioners allege that the permit: (1) violates the Agency's commitments and obligations to address environmental justice issues; (2) lacks a compliance schedule and certification of compliance; (3) does not address modifications Onyx allegedly took that triggered NSR review; (4) is based on an eight-year old application; (5) lacks practically enforceable conditions; (6) contains a permit shield that broadly insulates it from ongoing and recent violations; (7) fails to include conditions that meet the legal requirements for monitoring; (8) does not contain a statement of basis; (9) does not require prompt reporting of violations; and (10) fails to establish annual mercury and lead limits.

I. Environmental Justice and the Resource Conservation and Recovery Act

The Petitioners allege that the proposed Onyx permit and the process leading up to its issuance violate the Agency's commitments and obligations to address environmental justice issues. Petition at 2. Petitioners state that the Onyx facility is located in an environmental justice area in Sauget, Illinois; that granting Onyx permits to continue to operate its toxic waste incinerator is an environmental justice issue; that Onyx has one of the worst compliance records in Illinois; and that it is surrounded by other facilities that are also unable to comply with Clean Air Safeguards. Petition at 2-4.

The Petitioners also state that U.S. EPA has the authority to object to the proposed title V permit and block issuance of any other permits on the basis that this facility presents an unreasonable threat of harm and that the threat is disproportionately borne by low-income and minority residents. Petition at 4. Citing Executive Order ("EO") 12898, the Act, and the Resource Conservation and Recovery Act ("RCRA"), Petitioners maintain that U.S. EPA can establish permit limits in order to avoid disparate impact on low-income and minority communities. *Id*.

The Petitioners discuss a December 1, 2000, memorandum signed by then U.S. EPA General Counsel Gary Guzy ("Guzy memorandum") that outlines U.S. EPA's authority to address environmental justice issues in RCRA permitting decisions. Petition at 4-5. Petitioners indicate that the Guzy memorandum focuses on RCRA's Omnibus Provision, Section 3005(c)(3), and, quoting the memorandum, Petitioners state that denial of a permit is appropriate "to address the following health concerns in connection with hazardous waste management facilities that may affect low-income communities or minority communities: 1) [c]umulative risks due to exposure from pollution sources in addition to the applicant facility; 2) [u]nique exposure pathways (e.g. subsistence fishers, ...); and 3) [s]ensitive populations (e.g. children with levels of lead in their blood, ...)." Petition at 5-6. Petitioners argue that a low-income and minority community located near the Onyx incinerator is suffering from all three high-risk scenarios. Petition at 6. Petitioners conclude that, because Onyx is unwilling or unable to comply with public health protections, RCRA 3005(c)(5) mandates that U.S. EPA close the Onyx facility. Petition at 7-8.

RCRA § 3005(c)(3) broadly grants U.S. EPA (or an authorized state) the authority to require "terms and conditions . . . necessary to protect human health and the environment." RCRA §3005(c)(3), 42 U.S.C. § 9625(c)(3). This omnibus provision may be used to implement Executive Order 12898. *In re Chemical Waste Management of Ind., Inc. (CMW 1)*, 6 E.A.D. 66, 74-75 (EAB 1995). However, the RCRA § 3005(c)(3) omnibus provision is clearly limited to "permit[s] issued under this section," i.e., RCRA treatment, storage, or disposal of hazardous waste permits. In addition, objections by U.S. EPA to a title V permit are limited to noncompliance with applicable requirements under the Act. 42 U.S.C. § 7661d; *see also* 40 C.F.R. § 70.2 (defining "applicable requirement" to include specified standards or requirements promulgated pursuant to the Clean Air Act). Accordingly, U.S. EPA may not object to the issuance of a title V permit on the basis of the omnibus provision in RCRA.

The Petitioners conclude that U.S. EPA has not complied with its legal obligations to consider and resolve the environmental justice issues implicated by Onyx's proposed permits. *Id.* Petitioners argue that U.S. EPA failed to complete a health assessment before it or the state issued draft permits for public review. Petition at 9. Additionally, the Petitioners state that U.S. EPA did not assure early and ongoing public involvement opportunities and failed to require IEPA to consider environmental justice concerns. Petition at 11.

Executive Order 12898, signed on February 11, 1994, focuses federal attention on the environmental and human health conditions of minority populations and low-income populations with the goal of achieving environmental protection for all communities. The Executive Order also is intended to promote non-discrimination in federal programs substantially affecting human health and the environment, and to provide minority and low-income communities access to public information on, and an opportunity for public participation in, matters relating to human health or the environment. It generally directs federal agencies to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental affects of their programs, policies, and activities on minority and low-income populations.

Environmental justice issues can be raised and considered in a variety of actions carried out under the Act; for example, when U.S. EPA or a delegated state issues a NSR permit. Unlike NSR permits, however, title V generally does not impose new, substantive emission control requirements, but rather requires that all underlying applicable requirements be included in the operating permit. Title V also includes important public participation provisions as well as monitoring, compliance certification, and reporting obligations intended to assure compliance with the applicable requirements.

To justify exercising an objection by U.S. EPA to a title V permit pursuant to section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), Petitioners must demonstrate that the permit is not in compliance with the applicable requirements of the Act, including the requirements of the Illinois State Implementation Plan ("SIP").

Petitioners first present environmental justice arguments as support for the position that the Administrator must object to the permit. The Petitioners also raise concerns with the proposed RCRA permit to be issued to Onyx. Petitioners argue that the Administrator is required under RCRA to close down the Onyx incinerator because of past violations and environmental justice concerns.[1] Petitioners have not shown that their particular civil rights concerns are grounds under the Act for objection to the Onyx permit.[2] Likewise, the RCRA permit and its requirements by themselves are not applicable title V permit requirements under the Act. For these reasons, the petition is denied on these issues.

At one point in the discussion of RCRA and environmental justice issues, the Petitioners acknowledge that title V does not generally impose new substantive emission control requirements on facilities. Petition at 8. Petitioners maintain, however, that at least one applicable requirement is relevant to this issue. *Id*. Petitioners state that Illinois SIP includes a provision stating that "no person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with other sources, to cause or tend to cause air pollution in Illinois." 35 Ill. Admin. Code § 201.141. *Id*. Petitioners then state that the term "air pollution" is defined to mean "the presence in the atmosphere of one or more air contaminants in sufficient quantities

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[1] Onyx is subject to the requirements of 40 C.F.R. Part 63, Subpart EEE - National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. The new Subpart EEE requirements will generally integrate the monitoring, compliance testing, and record keeping requirements for air emissions from a RCRA permit into the title V operating permit. The Petitioners have not shown that any particular permit condition requirement is deficient under Subpart EEE or the Act.

[2] As a recipient of U.S. EPA financial assistance, the programs and activities of IEPA, including its issuance of the Onyx permit, are subject to the requirements of title VI of the Civil Rights Act of 1964, as amended, and EPA's implementing regulations, which prohibit discrimination by recipients of U.S. EPA assistance on the basis of race, color, or national origin. 42 U.S.C. 2000d et seq.; 40 C.F.R. part 7. The Petitioners may file a complaint under title VI and EPA's title VI regulations if they believe that the state discriminated against them in violation of those laws by issuing the permit to Onyx. The complaint, however, must meet the jurisdictional criteria that are described in U.S. EPA's title VI regulations in order for U.S. EPA to accept the complaint for investigation.

and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property." 35 Ill. Admin. Code § 201.102. *Id*. Petitioners argue that these provisions of the Illinois SIP are implicated because Onyx will be discharging such contaminants as mercury, lead, and dioxin into the environment at levels that are injurious to human health and the environment. *Id*. Petitioners did not raise this issue in their public comments and did not identify other comments on the draft permit that identified this issue or offer any explanation why it could not have been raised to IEPA at the appropriate time. Accordingly, the petition is denied on this issue. *See* section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), 40 C.F.R. § 70.8(d).

II. Compliance schedule and certification

The Petitioners argue that an applicant for a title V permit must disclose its compliance status and either certify compliance or enter into an enforceable compliance schedule to remedy any violations pursuant to 42 U.S.C. § 7661b(b) and 40 C.F.R. § 70.5(c)(8-9). Petition at 13. The Petitioners have asserted that, because Onyx has not certified compliance with all the requirements applicable to the facility and IEPA has not required an updated certification, IEPA must include a schedule of compliance or other remedial measures in the proposed title V permit. *Id*. Petitioners cite to IEPA's enforcement referrals to the Illinois Attorney General's office and to the Illinois Attorney General's comments on the Onyx proposed permit as evidence of Onyx's alleged violations. Petitioners maintain that, because of the referrals, the Onyx permit must contain a compliance schedule to address the alleged violations and the Administrator must object to the permit because of the lack of a compliance schedule.

A. Compliance measures

The Petitioners state that, based on a letter from the Illinois Attorney General ("IAG") to IEPA,[3] the Administrator should object to the Onyx permit. Petition at 14. Petitioners cite comments on the proposed permit from the IAG that criticize IEPA for its failure to include measures in the proposed permit to assure future compliance by Onyx with the requirements of the Illinois Environmental Protection Act. *Id*. The IAG comments included two specific measures that the former operator of the Onyx facility stated were necessary to prevent future violations. *Id*. The IAG stated that the permit application had to be reviewed to ensure that all the necessary actions were included as permit conditions. *Id*. The Petitioners quote the IAG's letter, which states that "[a]s currently written, the permits will not assure that operation of this facility will not violate the Environmental Protection Act or regulations . . . ." *Id.* Petitioners argue that, because the permit does not address the compliance issues raised by the IAG, the proposed permit is unlawful and the Administrator should object to the permit. *Id*.

40 C.F.R. §§ 70.5(c)(8)(iii)(C) and 70.6(c)(3) require that, if a facility is in violation of an applicable requirement and it will not be in compliance at the time of permit issuance, its permit must include a compliance schedule that meets certain criteria. For sources that are not in compliance with applicable requirements at the time of permit issuance, compliance schedules

[3] The Petitioners cite to a comment letter dated February 17, 2004. However, the Illinois Attorney General's office submitted comments on the draft Onyx permit to IEPA on September 11, 2003. The September 2003 letter contains the language to which Petitioners refer.

must include "a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance." 40 C.F.R. § 70.5(c)(8) (iii)(C). If the reported violation has been corrected prior to permit issuance, a compliance schedule is no longer necessary.

Petitioners brought to IEPA's notice the history of violations at the facility, and the IAG questioned during the public comment period on the draft permit whether measures necessary to prevent future violations were incorporated into the permit. In addition to the Petitioners' comments, the IAG has commented that the proposed title V permit does not include the very measures that Onyx had identified as necessary to prevent the repeat of the violations that previously occurred. IEPA, however, did not respond to the Illinois Attorney General's or other petitioners' comments regarding the necessity of a compliance schedule for the violations alleged in their comments.

It is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments. *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) ("the opportunity to comment is meaningless unless the agency responds to significant points raised by the public."). Accordingly, IEPA has an obligation to respond to significant public comments. U.S. EPA concludes that IEPA's failure to respond to significant comments may have resulted in one or more deficiencies in the Onyx permit. As a result, U.S. EPA is granting the petition on this issue and requiring IEPA to address Petitioner's significant comments concerning the possible need for a compliance schedule in the proposed permit.

B. Compliance certification

40 C.F.R. § 70.5(c)(9)(i) requires an applicant to submit "[a] certification of compliance with all applicable requirements by a responsible official . . . ." It does not appear from the record that Onyx submitted a compliance certification at the time of application. The State, U.S. EPA, and the public are deprived of meaningful compliance information that is necessary for the development of a comprehensive permit when a compliance certification is not provided at the time of application.

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, U.S. EPA considers whether a Petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. *See* section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), (requiring an objection "if the petitioner demonstrates . . . that the permit is not in compliance with the requirements of this Act . . . ."). Here, IEPA did not consider Onyx's compliance history and alleged failure to submit a compliance certification as required by 40 C.F.R. § 70.5(c)(8)-(9). IEPA's failure to consider this information may have resulted in flaws in the proposed title V permit. For this reason, the petition is granted on this issue. IEPA must require Onyx to submit a current compliance certification. If Onyx cannot certify compliance with all applicable requirements, IEPA must include in the title V permit a compliance schedule designed to bring Onyx into compliance. 40 C.F.R. §§ 70.5(c)(8)(iii)(C) and 70.6(c)(3).

C. New Source Review ("NSR")

The Petitioners state that, based on the IAG's letter, the Administrator should object to the Onyx permit because there is strong evidence that Onyx undertook modifications that triggered requirements arising from NSR. Petition at 15. The Petitioners allege that Onyx avoided permitting requirements and the requirement to install modern pollution control equipment. *Id*. Petitioners further assert that, in the absence of a determination whether NSR applies, IEPA cannot know what emissions and operational standards apply to Onyx. Petition at 14 -16.

Petitioners discuss in some detail why a determination of whether Onyx unlawfully avoided NSR is directly relevant to title V permitting. *Id*. Petitioners argue that ensuring compliance with the requirements originating in the Act is a fundamental goal of the title V permitting process. Petition at 15. Petitioners assert that the NSR permitting program serves two important purposes: it ensures that subject entities comply with air quality standards when components are modified or added to these facilities and it requires that new plants or existing plants undergoing a major modification install state-of-the-art control technology. 42 U.S.C. § 7401(a)(1) and (2). *Id*. Petitioners maintain that a determination that NSR has been triggered by site modifications would require the source to comply with new source requirements and apply state-of-the-art pollution controls, which are much more stringent than emission limits proposed without a NSR permit. *Id.* Petitioners argue that IEPA developed the proposed permit conditions and standards based on the applicant's representations that it is not subject to new source standards. *Id*. Petitioners continue by stating that if Onyx were subject to NSR requirements, entirely different emission and operational standards would apply than those included by IEPA in the proposed permit. *Id.* Petitioners conclude that IEPA cannot know what standards and conditions apply without determining if NSR applies. *Id.* Petitioners state that the Administrator must object to the permit because IEPA failed to determine whether NSR applies. *Id.*

The issues raised here were brought to IEPA's attention during the public comment period on the draft permit. Under section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), any person may petition the Administrator to object to the issuance of a title V permit so long as the petition is based on objections that were raised with reasonable specificity during the public comment period.[4] In this case, both the Petitioners and the IAG raised significant issues during the comment period that were not addressed by IEPA. IEPA has an obligation to respond to significant public comments.

U.S. EPA concludes that IEPA's failure to respond to the Petitioner's comments may have resulted in a deficiency in the permit. As a result, U.S. EPA is granting the petition on this issue and requiring IEPA to address these significant comments concerning modifications made at the Onyx facility and the potential applicability of NSR requirements.

[4] A petitioner may also demonstrate that it was impracticable to raise the objection issue during the comment period or that the grounds for the objection arose after the close of the comment period. 42 U.S.C. § 7661d(b)(2).

III. Eight-year old application

The Petitioners state that the Administrator must object to the proposed Onyx permit because it was based on an eight-year old application that Onyx never updated. The Petitioners assert that Onyx must be required to update its application to include any new information, such as new equipment and other information that is highly relevant to issuing a meaningful permit. Petition at 16.

The Petitioners have not raised any specific information about which Onyx should have updated its title V permit application. The fact that eight years passed between the date that Onyx submitted its permit application and the date IEPA issued the draft permit does not, in itself, necessarily mean the application is deficient, or that a new application is required. However, 40 C.F.R. § 70.5 requires applicants to provide additional information necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit. In the present case, since Onyx submitted its title V permit application, 40 C.F.R. part 63, subpart EEE, the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, has taken effect. These regulations, which required compliance no later than September 30, 2002, apply to Onyx. Therefore, since these new standards were put into place, it is clear that Onyx should have updated its permit application to reflect the applicability and methodology of compliance with the standards. For these reasons, the petition is granted on this issue. IEPA must require Onyx to submit an updated application that reflects all applicable requirements for the source. IEPA should use the information from the updated application, and the initial compliance certification required above, to make any necessary changes to the permit.

IV. Practical Enforceability

The Petitioners state that the Administrator must object to the proposed Onyx permit because it contains conditions that are not practically enforceable. The Petitioners cite five conditions from the permit that they believe are not practically enforceable. The Petitioners cite U.S. EPA Region 9's Title V Permit Review Guidance, September 9, 1999, as a basis for this claim. Petition at 17.

U.S. EPA has reviewed the specific conditions raised by the Petitioners and provided its decision below on each specific condition cited.

A. Condition 7.1.6.b.ii

Petitioners note that page 28 of the permit, Condition 7.1.6.b.ii, requires Onyx to "notify the Illinois EPA of the intent to incinerate [dioxin-listed hazardous waste]." Petitioners argue that this condition does not indicate when the notification is to occur or in what format the notification must be and question how the public can monitor compliance with the provision. Petition at 17.

The permit condition cited by Petitioners sets the required destruction and removal efficiency ("DRE") level for five dioxin-listed hazardous wastes and requires the permittee to

demonstrate that the required DRE will be achievable for four other hazardous wastes. Thereafter, the permit requires the permittee to notify IEPA of *its intent* to combust six hazardous wastes. The language from permit condition 7.1.6.b.ii cited by the Petitioners is taken directly from U.S. EPA's regulation in 40 C.F.R. § 63.1203(c)(2). This language makes clear that Onyx is in violation of its permit if it incinerates the listed hazardous wastes before notifying IEPA. Under 40 C.F.R. § 70.6(a)(3)(iii), a permit must include "all applicable reporting requirements." Because the permit language is identical to the language of the underlying requirement, the petition is denied on this issue.

B. Condition 7.1.7.g.

Petitioners state that Condition 7.1.7.g. is a new provision that requires Onyx to operate the incinerator during the performance test under "normal conditions (or conditions that will result in higher emissions)." Petitioners note that there also are similar provisions in the subsections 7.1.7.g.i. and 7.1.7.g.ii. Petitioners argue that it is unclear whether Onyx must conduct the performance test under "normal conditions" or "conditions that result in higher emissions." Petitioners also state that it is unclear which pollutants are at issue. Petition at 17.

Permit condition 7.1.7.g. sets forth comprehensive performance testing requirements. The condition requires the permittee to operate the combustor under normal or higher than normal emissions rates during testing. Condition 7.1.7.g.i. requires the permittee to feed *normal or higher levels* of chlorine during the dioxin/furan test, and condition 7.1.7.g.ii. requires the permittee to feed *normal or higher than normal levels* of ash when testing the hazardous waste incinerators.

The permit condition clearly states that the testing covered is dioxin/furan performance testing and testing of the hazardous waste incinerators. Although demonstration of compliance in a "worst-case" scenario will also demonstrate compliance under normal operating conditions, the permit does not make clear what IEPA considers "normal" operating conditions. Therefore, U.S. EPA is granting on this issue. IEPA must make clear either in the permit or statement of basis what constitutes "normal" operating conditions for purposes of this test.

C. Condition 7.1.7.p.

Petitioners note that Condition 7.1.7.p. requires Onyx to "cease hazardous waste burning immediately" if it fails to "postmark a Notification of Compliance." Petitioners assert that this must be a simple but important drafting error. Petition at 17.

The language from permit condition 7.1.7.p. cited by the Petitioners is taken directly from U.S. EPA's regulation in 40 C.F.R. § 63.1207(k). The regulation, in relevant part, states:

> Failure to submit a timely notification of compliance. (1) If you fail to postmark a Notification of Compliance by the specific date, you must cease hazardous waste burning immediately.

Because the permit language is identical to the language of the underlying requirement, the petition is denied on this issue.

D. Condition 7.1.9.a.ii.

Petitioners note that Condition 7.1.9.a.ii. uses the term "you" rather than "Permittee," which is the term that is used everywhere else in the permit. Petitioners suggest that this is probably just a simple, but confusing, drafting error. Petitioners note that in this same section, there is reference to "owners and operators of lightweight aggregate kilns" and "cement kilns." Petitioners posit that these provisions do not have anything to do with Onyx, but, instead, highlight IEPA's failure to tailor the applicable statutory and regulatory requirements to this facility. Petition at 18.

Petitioners are correct that the permit uses the term "you" in this section and the term "Permittee" throughout the rest of the permit; however, the use of the term "you" in the proposed permit does not diminish the enforceability of the permit. It is clear that the provision at issue is referring to the permittee. The petition is denied on this issue.

The reference to "owners and operators of lightweight aggregate kilns" and "cement kilns" is cited directly from 40 C.F.R. § 63.1200, "*Who is subject to these regulations?*" (stating, in part, that "[t]he provisions of this subpart apply to all hazardous waste combustors: hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns."). The provisions of this condition appear to allow Onyx to elect to comply with alternative requirements, such as the "emissions averaging requirements utilized by cement kilns with in-line raw mills." Permit at 85. The alternative regulatory requirements that Onyx is apparently allowed to elect under the permit are cross referenced; but the regulations referenced are not applicable to Onyx's facility. Onyx must comply with the regulations applicable to hazardous waste incinerators and may not be allowed through its permit to elect to comply with requirements that are applicable only to hazardous waste burning cement kilns or hazardous waste burning lightweight aggregate kilns. For these reasons, the petition is granted on this issue. IEPA is directed to amend the permit to limit Onyx's elections to regulatory requirements applicable to hazardous waste incinerators.

E. Condition 7.1.5

Petitioners assert that the terms "container," "containerized solids," or "manufacturer's specifications" in Condition 7.1.5 must be defined. Petition at 18.

The permit terms listed above are not defined in the title V permit. The terms are used in the *operating requirements and work practices* section of the proposed permit. The permit condition states, in part, "the following physical forms and feed rates of the waste feed shall not exceed the following limits, as established by the RCRA permit B-29R." The reference to the RCRA permit is inappropriate in this condition because the RCRA permit is not an applicable requirement of the title V permit program. In addition, determining the parameters for incinerating wastes stored in "containers" or as "containerized solids" is not possible absent a definition of those terms from the underlying applicable requirements. The petition is granted

on this issue. U.S. EPA directs IEPA to define the above terms, "container" and "containerized solids," or explain in the statement of basis where the terms are defined. U.S. EPA also directs IEPA to respond the Petitioners' comments on the manufacturer's specifications by providing information on where the applicable specifications can be located.

V. Permit shield

The Petitioners state that the Administrator must object to the proposed Onyx permit because it contains a permit shield that broadly insulates Onyx from ongoing and recent violations. Petition at 18. Petitioners argue that condition 8.1 is a broad permit shield that is unwarranted and threatens to undermine the Illinois Attorney General's pending enforcement cases against Onyx. Petitioners maintain that a title V permit shield is not available for noncompliance that occurred prior to or continues after the submission of an application.

Section 8.1 of the Onyx permit states:

> Pursuant to Section 39.5(7)(j) of the Act, the Permittee has requested and has been granted a permit shield. This permit shield provides that compliance with the conditions of this permit shall be deemed compliance with applicable requirements which were applicable as of the date of the proposed permit for this source was issued, provided that either the applicable requirements are specifically identified within this permit, or the Illinois EPA, in acting on this permit application, has determined that other requirements specifically identified are not applicable to this source and this determination (or a concise summary thereof) is included in this permit.
>
> This permit shield does not extend to applicable requirements which are promulgated after November 20, 2002 (the date of issuance of the draft permit) unless the permit has been modified to reflect such new requirements.

The language of Condition 8.1 is consistent with the language of 40 C.F.R. § 70.6(f). This language makes clear that the permit shield extends only to requirements which are identified specifically in the title V permit, either as an applicable requirement or in a non-applicability determination.[5] This language does not extend the shield to compliance with or violation of applicable requirements that are not specifically included in the permit or non-applicability determination. Petitioners have not demonstrated that Condition 8.1 could preclude an appropriate enforcement action for alleged violations of those requirements raised by IAG. While the permit shield would be clearer if the state included in a statement of basis its explanation of the extent of the shield, the language in the permit is consistent with part 70; therefore, the petition is denied on this issue.

VI. Monitoring

The Petitioners argue that the Administrator must object to the proposed Onyx permit because it fails to include conditions that meet the legal requirements for monitoring. The Petitioners cite condition 7.1.8.b.ii. on page 56 of the proposed Onyx permit, which provides that

[5] There do not appear to be any non-applicability determinations in the permit.

Onyx must install, calibrate, maintain, and operate a PM CEMs to demonstrate compliance. Petitioners note that the next clause provides that the permittee need not comply with the requirement to "install, calibrate, maintain, and operate the PM CEMs until such time that U.S. EPA promulgates all performance specifications and operational requirements for PM CEMs." Petitioners argue that there are no PM monitoring requirements established in the permit without the obligation to install and operate the PM CEMs, which is contingent on future U.S. EPA action. Petition at 18.

U.S. EPA promulgated the performance specification for PM CEMs (Performance Standard 11) on January 12, 2004. Because U.S. EPA promulgated the performance specifications and Onyx is required to install PM CEMs per condition 7.1.8.b.ii., there is no flaw in the permit. Therefore, the permit is denied on this issue.

VII. Statement of basis

The Petitioners state that the Administrator must object to the Onyx permit because it does not contain a statement of basis. Petition at 19. A statement of basis is required by 40 C.F.R. § 70.7(a)(5) and Section 39.5(8)(b) of the Illinois Environmental Policy Act. A statement of basis must set forth the legal and factual basis for the draft permit conditions. Petitioners assert that the statement of basis is particularly important in this case because the applicability determinations are difficult and not clear. Petitioners maintain that there is no clear explanation of how limitations and requirements apply to the permit and that makes it difficult to determine if Onyx is complying with the permit conditions. Petition at 19

U.S. EPA's title V regulations state that "the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." The permitting authority shall send this statement to EPA and to any other person who requests it." 40 C.F.R. § 70.7(a)(5)); *see also* 415 ILCS § 39.5(8)(b). Commonly referred to as a "statement of basis," this document is not part of the permit itself, but rather a separate document which is to be sent to U.S. EPA and to interested parties upon request.

A statement of basis must describe the origin or basis of each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that U.S. EPA and the public would find important to review.[6] Rather than restating

[6] U.S. EPA Region 5 provided additional guidance in a December 20, 2001 letter to the State of Ohio on the content of an adequate statement of basis, which is available at http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/sbguide.pdf. Region 5's letter recommends the same five elements outlined in a Notice of Deficiency ("NOD") recently issued to the State of Texas for its title V program. *See*, 67 Fed. Reg. at 732 (January 7, 2002). These five key elements of a statement of basis are (1) a description of the facility; (2) a discussion of any operational flexibility that will be utilized at the facility; (3) the basis for applying the permit shield; (4) any federal regulatory applicability determinations; and (5) the rationale for the monitoring methods selected. Id. at 735. In addition to the five elements identified in the Texas NOD, the Region 5 letter further recommends the inclusion of the following topical discussions in the statement of basis: (1) monitoring and operational restrictions requirements; (2) applicability and exemptions; (3) explanation of any

the permit, it should list anything that deviates from simply a straight recitation of applicable requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring that is required under 40 C.F.R. § 70.6(a)(3)(i)(B). Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and U.S. EPA a record of the applicability and technical issues surrounding the issuance of the permit. *See*, *e.g.*, *In Re Port Hudson Operations, Georgia Pacific*, Petition No. 6-03-01, at pages 37-40 (May 9, 2003) ("*Georgia Pacific*"); *In Re Doe Run Company Buick Mill and Mine*, Petition No. VII-1999-001, at pages 24-25 (July 31, 2002) ("*Doe Run*"); *In Re Fort James Camas Mill*, Petition No. X-1999-1, at page 8 (December 22, 2000) ("*Ft. James*").

The failure of a permitting authority to meet the procedural requirements of § 70.7(a)(5), however, does not necessarily demonstrate that the resulting title V permit is substantively flawed. As noted above, in reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, U.S. EPA considers whether the petitioner has demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. Where the record as a whole supports the terms and conditions of the permit, flaws in the statement of basis generally will not result in an objection. *See, e.g., Doe Run* at 24-25. In contrast, where flaws in the statement of basis resulted in, or may have resulted in, deficiencies in the title V permit, U.S. EPA will object to the issuance of the permit. *See, e.g., Ft. James* at 8; *Georgia Pacific* at 37-40. U.S EPA has made exceptions from the statement of basis requirement, but only when the permit at issue is clear on its face and no additional detail is necessary to understand the legal and factual basis for the draft permit conditions. *See In re Los Medanos Energy Center*, at page 11 (May 24, 2004).

IEPA typically prepares a project summary when it drafts a title V permit, and posts it with the draft permit on its permit website. IEPA has developed the project summary to act as its statement of basis. However, in this instance, IEPA failed to post the project summary on its website. Although part 70 does not require a permitting authority to post statements of basis on a website, IEPA's failure either to post the Onyx project summary on the site where it posts draft permits and all other summaries, or to indicate on the site where the public could find the summary in effect made the summary unavailable to the public. U.S. EPA believes that the Onyx facility and its permitting history are complex enough that a statement of basis is necessary

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conditions from previously issued permits that are not being transferred to the title V permit; (4) streamlining requirements; and (5) certain other factual information as necessary. In a letter dated February 19, 1999 to Mr. David Dixon, Chair of the CAPCOA Title V Subcommittee, the EPA Region IX Air Division provided a list of air quality requirements to serve as guidance to California permitting authorities that should be considered when developing a statement of basis for purposes of EPA Region IX's review. This guidance is consistent with the other guidance cited above. Each of the various guidance documents, including the Texas NOD and the Region V and IX letters, provides generalized recommendations for developing an adequate statement of basis rather than "hard and fast" rules on what to include in any given statement of basis. Taken as a whole, they provide a good roadmap as to what should be included in a statement of basis on a permit-by-permit basis, including such considerations as the technical complexity of the permit, the history of the facility, and the number of new provisions being added at the title V permitting stage.

in order to support the basis for IEPA's permitting decisions. *See, e.g., In re Los Medanos* at page 4 (May 24, 2004). For these reasons, the petition is granted on this issue. IEPA is directed to provide a statement of basis that complies with the requirements of U.S. EPA regulations at 40 C.F.R. § 70.7(a)(b), Section 39.5(8)(b) of the Illinois Environmental Protection Act, and this order. IEPA either must post its statements of basis (or project summaries, if they meet the statement of basis criteria) on the website or make available to the public on the website a notice telling the public where it can obtain statements of basis.

VIII. Prompt reporting

The Petitioners assert that the Administrator must object to the proposed Onyx permit because it does not require prompt reporting of violations. The Petitioners maintain that the reporting requirements in condition 7.1.10. are not prompt because the permit gives Onyx 30 days to file deviation reports with IEPA. Petition at 19.

Title V permits must provide for prompt reporting of deviations from permit requirements. 40 C.F.R. § 70.6(a)(3)(iii)(B) states that "[t]he permitting authority shall define 'prompt' in relation to the degree and type of deviation likely to occur and the applicable requirement." Permitting authorities may specify prompt reporting requirements for each permit term on a case-by-case basis, or may adopt general reporting requirements by rule, or both. Moreover, permitting authorities must consider whether the reporting requirements of applicable requirements constitute prompt reporting. Therefore, whether IEPA has addressed prompt reporting sufficiently in a specific permit is a case-by-case determination under the rules applicable to the approved program.

The permit record does not include IEPA's explanation of why the deviation reporting required for the applicable emissions limitations is prompt "in relation to the degree and type of deviation likely to occur and the applicable requirement." In this case, Onyx incinerates hazardous and toxic materials and IEPA has not explained why it considers a thirty day reporting period to be prompt for all deviations. For this reason, U.S. EPA is granting on this issue. U.S. EPA directs IEPA to explain how a thirty day reporting requirement for all deviations is prompt or require a shorter reporting period for deviations as is provided for in 40 C.F.R. Part 71.[7]

IX. The Administrator must object to the proposed permit because it fails to establish annual mercury and lead limits

[7] U.S. EPA's rules governing the administration of federal operating permit programs require, inter alia, that permits contain conditions providing for the prompt reporting of deviations from permit requirements. Under 40 C.F.R. § 71.6(a)(3)(iii)(B), deviation reporting is governed by the time frame specified in the underlying applicable requirement unless the applicable requirement does not provide for deviation reporting. In such a case, the part 71 regulations set forth the minimum deviation reporting requirements that must be included in the permit. For example, emissions of a hazardous or toxic air pollutant that continue for more than an hour in excess of permit requirements must be reported to the permitting authority within 24 hours of the occurrence. And, if excess emissions of any regulated air pollutant, other than hazardous or toxic air pollutant, continue for more than two hours, the facility must report these deviations within 48 hours.

The Petitioners state that the Administrator must object to the Onyx permit because it fails to establish annual mercury and lead limits. (Petition p. 19).

The Petitioners have not alleged in this section that an applicable requirement is either missing or incorrectly applied in the Onyx permit. 40 C.F.R. § 70.6(a)(1) requires that title V permits include "emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." Furthermore, title V generally does not authorize a permitting authority to impose substantive new requirements. *See* 40 C.F.R. § 70.1(b). Since the Petitioners have not provided information demonstrating that IEPA has failed to include or incorrectly applied any emission limitations and standards applicable to the Onyx facility, the petition is denied on this issue.

CONCLUSION

For the reasons set forth above, and pursuant to section 505(b)(2) of the Clean Air Act, I grant in part and deny in part the petition of the Sierra Club and American Bottom Conservancy requesting the Administrator to object to issuance of the title V CAAPP permit to Onyx Environmental Services.

Dated: February 1, 2006

/S/
Stephen L. Johnson
Administrator

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF ONYX ENVIRONMENTAL SERVICES	)
	) ORDER RESPONDING TO) PETITIONERS' REQUEST THAT
Petition number V-2005-1 CAAPP No. 163121AAP Proposed by the Illinois Environmental Protection Agency	) THE ADMINISTRATOR OBJECT) TO ISSUANCE OF A STATE) OPERATING PERMIT)

ORDER AMENDING PRIOR ORDER PARTIALLY DENYING AND PARTIALLY GRANTING PETITION FOR OBJECTION TO PERMIT

EPA has become aware of a factual error in the February 1, 2006 Order Responding to Petitioners' Request that the Administrator Object to Issuance of a proposed State Operating Permit for Onyx Environmental Services. To correct that error, I am amending the February 1, 2006 Order by striking out the section entitled "VI. Monitoring" and replacing it with the language appearing below. As a result of the correction, I am hereby granting the petition on that issue.

The amended language for section VI is as follows:

VI. Monitoring

The Petitioners argue that the Administrator must object to the proposed Onyx permit because it fails to include conditions that meet the legal requirements for monitoring. The Petitioners cite condition 7.1.8.b.ii. on page 56 of the proposed Onyx permit, which provides that Onyx must install, calibrate, maintain, and operate Particulate Matter Continuous Emission Monitors (PM CEMs) to demonstrate compliance. Petitioners note that the next clause provides that the permittee need not comply with the requirement to "install, calibrate, maintain, and operate the PM CEMs until such time that U.S. EPA promulgates all performance specifications and operational requirements for PM CEMs." Petitioners argue that there are no PM monitoring requirements established in the permit without the obligation to install and operate the PM CEMs, which is contingent on future U.S. EPA action. Petition at 18.

U.S. EPA promulgated the performance specification for PM CEMs (Performance Standard 11) on January 12, 2004. However, U.S. EPA has not yet promulgated the operational requirements for PM CEMs. Accordingly, the requirement to install and operate PM CEMs does not currently apply to Onyx, although the permit properly requires PM CEMs once U.S. EPA promulgates such operational requirements. However, subpart EEE contains other

requirements intended to help assure compliance with the PM limits, including a requirement for bag leak detection monitoring.[6] The Onyx facility is equipped with baghouses, and therefore Onyx is required to operate and maintain a system to detect leaks from the baghouses, but the permit currently lacks provisions requiring a leak detection system. Accordingly, the lack of a currently applicable requirement to operate and maintain PM CEMs does not make the permit deficient under 40 C.F.R. 70.6(a)(3)(i)(B), but Petitioners are correct that the permit lacks monitoring required under other provisions of 40 C.F.R. §70.6, and therefore I am granting the petition on this issue and directing IEPA to revise the permit to incorporate all PM monitoring required for the facility under subpart EEE, including a leak detection system.[7]

I am not revising the Order issued February 1 in any other way and its provisions, other than section VI, remain undisturbed and in effect.

Dated: AUG -9 2006

Stephen L. Johnson
Administrator

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[6] See Final Technical Support Document for HWC MACT Standards, Vol. IV: Compliance with the HWC MACT Standards (July 1999).

[7] Subpart EEE has been amended since the permit was proposed by IEPA, although the requirement for bag leak detection applied to the Onyx facility at the time the permit was proposed. In re-proposing the permit, IEPA should ensure that the permit properly reflects all of the current MACT requirements

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

APR 30 2014

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits

FROM: Stephen D. Page
Director

TO: Regional Air Division Directors, Regions 1-10

This memorandum and attachments provide guidance on satisfying the Clean Air Act title V annual compliance certification reporting and statement of basis requirements. It addresses two outstanding recommendations made by the Office of Inspector General (OIG) in the report titled, "Substantial Changes Needed in Implementation and Oversight of Title V Permits if Program Goals are to be Fully Realized," (OIG Report No. 2005-P-00010):

> *Recommendation 2-1: Develop and issue guidance or rulemaking on annual compliance certification content, which requires responsible officials to certify compliance with all applicable terms and conditions of the permit, as appropriate.*
>
> *Recommendation 2-3: Develop nationwide guidance on the contents of the statement of basis which includes discussions of monitoring, operational requirements, regulatory applicability determinations, explanation of any conditions from previously issued permits that are not being transferred to the title V permit, discussion of streamlining requirements, and other factual information, where advisable, including a list of prior title V permits issued to the same applicant at the plant, attainment status, and construction, permitting, and compliance history of the plant.*

In a February 8, 2013, memorandum to the OIG, the EPA stated its intent to address these two recommendations, as well as similar recommendations from the Clean Air Act Advisory Committee's Title V Task Force (*see* "Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience," April 2006).

The attachments below provide non-binding guidance that responds to OIG recommendations regarding annual compliance certification and statement of basis. The attachments highlight existing statutory and regulatory requirements and guidance issued by the EPA, and state and local permitting authorities. In addition, the attachments highlight key components of the applicable legal requirements and clarifications responsive to certain OIG recommendations. As you are aware, this information was developed in collaboration with EPA regional offices. Note that state and local permitting authorities

also provide guidance on title V requirements; the EPA encourages sources to consult with their state and local permitting authorities to obtain additional information or to obtain specific guidance.

If you have any questions, please contact Juan Santiago, Associate Director, Air Quality Policy Division/OAQPS, at (919) 541-1084, *santiago.juan@epa.gov*.

Attachments

Disclaimer

These documents explain the requirements of the EPA regulations, describes the EPA policies, and recommends procedures for sources and permitting authorities to use to ensure that the annual compliance certification and the statement of basis are consistent with applicable regulations. These documents are not a rule or regulation, and the guidance they contain may not apply to a particular situation based upon the individual facts and circumstances. The guidance does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. The use of non-mandatory language such as "guidance," "recommend," "may," "should," and "can," is intended to describe the EPA policies and recommendations. Mandatory terminology such as "must" and "required" is intended to describe controlling requirements under the terms of the Clean Air Act and the EPA regulations, but the documents do not establish legally binding requirements in and of themselves.

Attachment 1

Implementation Guidance on Annual Compliance Certification Requirements Under the Clean Air Act Title V Operating Permits Program

I. Overview of Title V and Annual Compliance Certification Requirements

Title V of the Clean Air Act (CAA or Act) establishes an operating permits program for major sources of air pollutants, as well as other sources. CAA sections 501-507; 42 U.S.C. Sections 7661-7661f. A detailed history and description of title V of the CAA is available in the preamble discussions of both the proposed and final original regulations implementing title V – the first promulgation of 40 CFR Part 70. *See* 57 FR 32250 (July 21, 1992) (Final Rule); 56 FR 21712 (May 10, 1991) (Proposed Rule). The EPA recently provided further information regarding compliance certification history in a proposed rulemaking titled, "Amendments to Compliance Certification Content Requirements for State and Federal Operating Permits Programs," published on March 29, 2013. 78 FR 19164. Under title V, states are required to develop and implement title V permitting programs in conformance with program requirements promulgated by the EPA in 40 CFR Part 70. Title V requires that every major stationary source (and certain other sources) apply for and operate pursuant to an operating permit. CAA section 502(a) and 503. The operating permit must contain conditions that assure compliance with all of the sources' applicable requirements under the CAA. CAA section 504(a). Title V also states, among other requirements, that sources certify compliance with the applicable requirements of their permits no less frequently than annually (CAA section 503(b)(2)), provides authority to the EPA to prescribe procedures for determining compliance and for monitoring and analysis of pollutants regulated under the CAA (CAA section 504(b)), and requires each permit to "set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." (CAA section 504(c).)

This guidance document focuses on the annual compliance certification, which applies to the terms and conditions of issued operating permits. CAA section 503(b)(2) states that the EPA's regulations implementing title V "shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority." CAA section 504(c) states that each title V permit issued "shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. . . Any report required to be submitted by a permit issued to a corporation under this subchapter shall be signed by a responsible corporate official, who shall certify its accuracy." Additional requirements of compliance certification are described in section 114(a)(3) of the CAA as follows:

> The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance

status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section [availability of information to the public].

CAA section 114(a)(3), 42 U.S.C. section 7414(a)(3). The EPA promulgated regulations implementing these provisions for title V operating permits purposes. Key regulatory provisions regarding compliance certifications are found in 40 CFR section 70.6(c), "Compliance requirements."

II. Overview of Annual Compliance Certification Requirements

The EPA's regulations at 40 CFR section 70.6(c) describe the required elements of annual compliance certifications. Specifically, 40 CFR section 70.6(c)(5)(iii)-(iv) provides that all permits must include the following annual compliance certification requirements:

> (iii) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):
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> (A) The identification of each term or condition of the permit that is the basis of the certification;
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> (B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section;
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> (C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred; and
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> (D) Such other facts as the permitting authority may require to determine the compliance status of the source.
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> (iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority.
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> (6) Such other provisions as the permitting authority may require.

Further information surrounding compliance certification is described in the regulatory provision addressing the criteria for a permit application, 40 CFR section 70.5(d). There have been revisions to Part 70 since its original promulgation in 1992.

One rulemaking action relevant to compliance certifications was in response to an October 29, 1999, remand from the United States Court of Appeals for the District of Columbia Circuit in *Natural Resources Defense Council (NRDC)* v. *EPA*, 194 F.3d 130 (D.C. Cir. 1999). In that case, the Court upheld a portion of the EPA's compliance assurance monitoring rule, but remanded back to the EPA the need to ensure 40 CFR sections 70.6(c)(5)(iii) and 71.6(c)(5)(iii) were consistent with language in CAA section 114(a)(3) which states that compliance certifications shall include, among other requirements, " 'whether compliance is continuous or intermittent.' " *NRDC* at 135 (internal citations omitted). Accordingly, the EPA proposed to add appropriate language to paragraph (c)(5)(iii)(C) of both 40 CFR sections 70.6 and 71.6. However, the final rule on June 27, 2003 (68 FR 38518) inadvertently deleted an existing sentence from the regulations (which was not related to the addition which resulted from the D.C. Circuit decision). The OIG Report referenced this issue and in response to the OIG, as agreed, the EPA has proposed to restore the inadvertently deleted sentence back into the rule. *See, e.g.,* 78 FR 19164 (March 29, 2013). This proposed rule would reinstate the inadvertently removed sentence – which, consistent with the Credible Evidence rule, requires owners and operators of sources to "identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information" – in its original place before the semicolon at the end of 40 CFR sections 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B). The EPA is still reviewing comments received on this proposal; however, today's guidance document is based on statutory and long-standing regulatory requirements regarding compliance certifications, obligations for "reasonable inquiry" and consideration of credible evidence, many of which were also relied upon in the EPA's proposal.

III. Implementation of the Annual Compliance Certification Requirements

The statutory and regulatory provisions regarding compliance certification provide direction to sources and permitting authorities regarding implementation of these provisions. Nonetheless, questions arise periodically and, as a general matter, responding to those questions typically occurs on a case-by-case basis, consistent with the statutory and regulatory requirements, as well as applicable state or local regulations. Questions may be posed to authorized permitting authorities, EPA Regional Offices, or EPA Headquarters offices. As a general matter, where formal responses are provided by EPA, such responses may be searched and viewed on various websites. These include, among others:

- *http://www.epa.gov/ttn/oarpg/t5pgm.html*

- Environmental Appeals Board (EAB) decisions on PSD permitting *http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/PSD+Permit+Appeals+(CAA)?OpenView* Environmental Appeals Board (EAB) decisions on title V permitting *http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Title+V+Permit+Appeals?OpenView*

- The EPA's online searchable database of many PSD and title V guidance documents issued by EPA headquarters offices and EPA Regions (operated by Region 7) *http://www.epa.gov/region07/air/policy/search.htm.*

- The EPA's online searchable database of CAA title V petitions and issued orders (operated by Region 7) *http://www.epa.gov/region7/air/title5/petitiondb/petitiondb.htm.*[1]

A review of these databases indicates that there are a number of issues that arise with some regularity and those general questions and responses are addressed below. In addition, the EPA notes that state and local permitting authorities are also a source of guidance on compliance certification form, instructions, and content. In some circumstances, state and local permitting authorities may require additional content for the annual compliance certification. *See, e.g.,* 40 CFR sections 70.6(c)(5)(iii)(D) and (c)(6). As a result, sources should review such requirements prior to completing the annual compliance certification.

A. Level of Specificity in Describing the Permit Term or Condition

The CAA and the EPA's regulations require that the annual compliance certification identify the terms and conditions that are the subject of the certification. As a general matter, specificity ensures that the responsible official has in fact reviewed each term and condition, as well as considered all appropriate information as part of the certification.[2] This does not mean, however, that each and every permit term and condition needs to be spelled out in its entirety in the annual compliance certification or that the certification needs to resemble a checklist of each permit term and condition. While some sources (and states) use what is informally referred to as a "long form" for certifications (where each term or condition is typically individually identified), such forms are not expressly required by either the CAA or the EPA's regulations, even though it may be advisable to use such a form.

The certification should include sufficient specificity and must identify the terms and conditions that are being covered by the certification. 40 CFR section 70.6(c)(5)(iii)(A)-(D). As a "best practice," sources may include additional information where there are unique or complex permit conditions such that "compliance" with a particular term and condition is predicated on several elements. In that case, additional information in the annual compliance certification may be advisable to explain how compliance with a particular condition was determined and, thus, the basis for the certification of compliance.

Consistent with the EPA's regulations, the annual compliance certification must include "[t]he identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period." 40 CFR section 70.6(c)(5)(iii)(B). For example, there may be situations where certification is based on electronic

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[1] The EPA's practice is to publish a notice in the *Federal Register* announcing that a petition order was signed. Once signed, the EPA's practice is to place a copy of that final order on the title V petition order database, which is searchable online.

[2] The EPA's regulations require that a "responsible official" sign the compliance certification. The term "responsible official" is defined in 40 CFR section 70.2.

data from continuous emissions monitoring devices, which may result in a fairly straightforward annual compliance certification. Alternatively, there may be situations where compliance during the reporting period was determined through parametric monitoring, which requires the source to consider various data and perform a mathematical calculation, to determine the compliance status. In that latter situation when various data from parametric monitoring are combined via calculation, the annual compliance certification may contain more detail regarding that term or condition which relies on parametric monitoring in the permit.[3]

Regardless of the level of specificity provided for the particular terms and conditions in the annual certification itself, the minimum regulatory requirements include "[t]he identification of each term or condition of the permit that is the basis of the certification." 40 CFR Section 70.6(c)(5)(iii)(A). As noted above, there may be different ways to meet this requirement. For example, when referencing a permit term or condition in the certification, if the permit incorporates by reference a citation without explaining the particular term or condition, the source may choose to provide additional clarity in the compliance certification to support the certification. Another situation where additional specificity may be advisable is where a source has an alternative operating scenario where the source may be best served by providing additional compliance related information in support of the certification. As another example, the part 71 federal operating permits program administered by the EPA includes a form, and instructions, for sources to use for their annual compliance certifications. Annual Compliance Certification (A-COMP), EPA Form 5900-04, at page 4, available at: *http://www.epa.gov/airquality/permits/pdfs/a-comp.pdf.* This form is not expressly required for non-EPA permitting authorities; however, this form and the instructions provide feedback regarding what to include in an annual compliance certification.

Importantly, permitting authorities have additional compliance certification requirements and/or recommendations that sources should consult before finalizing a compliance certification in order to ensure compliance with the applicable requirements. *See, e.g.*, 40 CFR section 70.6(c)(6).

B. Form of the Certification

As a general matter, there is no requirement in the Act or in Part 70 that a source use a specific form for the compliance certification (although some states have adopted specific forms and instructions). The most relevant consideration in certifications is not the form, but the content and clarity of the terms and conditions with which the compliance status is being certified. Some state permitting authorities have developed template forms and instructions to assist sources in ensuring compliance with applicable requirements. The EPA has not provided such templates, except as noted above where a form is provided for the EPA's part 71 permit program. While templates are not required by the statute or the regulations, they can be useful tools (e.g., to facilitate electronic reporting and consistency) so long as sources consider whether the form adequately covers their permitting and certification situation, and the sources are able to make adjustments where appropriate to ensure compliance. The type of form used should be

[3] The CAA and the EPA's regulations require other more frequent compliance reports in addition to the annual compliance certification. In some circumstances, it may be helpful for a source to reference another compliance report in the annual compliance certification, as appropriate.

considered in light of the regulatory requirement to certify compliance with the specific terms and conditions of the permit. 40 CFR section 70.6(c)(5)(iii)(C). Additionally, as was noted earlier, because approved state and local areas may require additional elements in the annual compliance certifications, sources should confirm that their form is consistent with applicable state and local permitting requirements.

C. Certification Language

The EPA's regulations at 40 CFR section 70.5(d) require that the annual compliance certification include the following language: "Based on information and belief formed after reasonable inquiry, I certify that the statements and information in this certification are true, accurate, and complete." (Emphasis added.) While the EPA appreciates that each permit includes specific monitoring requirements, additional data may be available that indicate compliance (or noncompliance). The EPA recently proposed to provide additional clarity on this issue by proposing to restore a sentence to 40 CFR section 70.6(c)(5)(iii)(B) that had been inadvertently deleted, as discussed above.

IV. Discussion of Compliance Certification Content in Clean Air Act Advisory Committee Final Report on the Title V Implementation Experience

In the EPA's February 8, 2013, memorandum to the OIG, stated its intent to address the OIG's recommendation concerning the annual compliance certification, as well as similar recommendations from the Clean Air Act Advisory Committee's Title V Task Force.[4] While this guidance document responds to the 2005 OIG Report, information provided above overlaps with recommendations from the Title V Task Force. This guidance document does not adopt the Task Force recommendations; however, to the extent that they overlap with the discussion above, the EPA provides some observations regarding those recommendations.

Section 4.7 of the Task Force Report discusses compliance certification forms. This section includes, among other items, comments from stakeholders, a summary of the Task Force discussions, and Task Force recommendations. Of the five recommendations included in this section of the Report, three were unanimously supported by the Task Force members (Recommendations 3, 4, and 5). Task Force Final Report at 119-120. EPA's discussion above regarding the level of specificity and the form of the annual compliance certification generally addresses the two recommendations for which there was not consensus within the Task Force (Recommendations 1 and 2).

The five recommendations, directly quoted from the Task Force Report, are as follows:

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[4] In April 2006, the Title V Task Force finalized a document titled, "Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience." This document was the result of the Task Force's efforts to review the implementation and performance of the operating permit program under title V of the 1990 Clean Air Act Amendments. Included in the report are a number of recommendations, including some specific recommendations regarding compliance certifications that are consistent with existing regulations and information provided in this guidance document.

Recommendation #1. Most of the Task Force endorsed an approach akin to the "short form" certification, believing that a line-by-line listing of permit requirements is not required and imposes burdens without additional compliance benefit. Under this approach, the compliance certification form would include a statement that the source was in continuous compliance with permit terms and conditions with the exception of noted deviations and periods of intermittent compliance. Although the permittee would cross-reference the permit for methods of compliance, in situations where the permit specifies a particular monitoring method but the permittee is relying on different monitoring, testing or other evidence to support its certification of compliance, that reliance should be specifically identified in the certification and briefly explained. An example of such a case would be where the permit requires continuous temperature records to verify compliance with a minimum temperature requirement. If the chart recorder data was not recorded for one hour during the reporting period because it ran out of ink, and the source relies on the facts that the data before and after the hour shows temperature above the requirement minimum and that the alarm system which sounds if temperature falls below setpoint was functioning and did not alarm during the hour, these two items would be noted as the data upon which the source relies for certifying continuous compliance with the minimum temperature requirement.

Recommendation #2. Others on the Task Force believed that more detail than is included in the short form is needed in the compliance certification to assure source accountability and the enforce-ability of the certification. These members viewed at least one of the following options as acceptable (some members accepting any, while others accepting only one or two):

1. The use of a form that allows sources to use some cross-referencing to identify the permit term or condition to which compliance was certified. Cross-referencing would only be allowed where the permit itself clearly numbers or letters each specific permit term or condition, clearly identifies required monitoring, and does not itself include cross-referencing beyond detailed citations to publicly accessible regulations. The compliance certification could then cite to the number of a permit condition, or possibly the numbers for a group of conditions, and note the compliance status for that permit condition and the method used for determining compliance. In the case of permit conditions that are not specifically numbered or lettered, the form would use text to identify the requirement for which the permittee is certifying.
2. Use of the long form.
3. Use of the permit itself as the compliance certification form with spaces included to identify whether compliance with each condition was continuous or intermittent and information regarding deviations attached.

Recommendation # 3. Where the permit specifies a particular monitoring or compliance method and the source is relying on other information, that information should be separately specified on the certification form.

Recommendation # 4. Where a permit term does not impose an affirmative obligation on the source, the form should not require a compliance certification; e.g., where the permit states that it does not convey property rights or that the permitting authority is to undertake some activity such as provide public notice of a revision.

Recommendation # 5. All forms should provide space for the permittee to provide additional explanation regarding its compliance status and any deviations identified during the reporting period.

Task Force Final Report at 118-120.[5] With regard to these recommendations, the EPA offers several observations. First, there is nothing in the CAA or Part 70 that prohibits Recommendation 3, 4, and 5, which had unanimous support from the Task Force. *See* 40 CFR section 70.6(c)(5)(iii)-(iv). Second, with regard to Recommendations 3 and 5, these should be considered "best practices" to ensure that the annual certification provides adequate information. Third, Recommendations 1 and 2 outline different ideas surrounding the level of specificity and the form of the annual compliance certification. This guidance document does address those issues and recommends activities consistent with the regulatory requirements while also providing some flexibility on the level of specificity depending on the complexity of the permit conditions being certified.

[5] With regard to the first recommendation, the EPA observes that the example provided in the Task Force Report identifies a scenario in which additional narrative on the annual compliance certification form would be useful to explain the determination that the sources was (or was not) in compliance with a permit term or condition.

Attachment 2

Implementation Guidance on Statement of Basis Requirements Under the Clean Air Act Title V Operating Permits Program

I. Overview of Legal Requirements for Statement of Basis

Section 502 of the CAA addresses title V permit programs generally. Among other required elements of the EPA's rules implementing title V, Congress stated that the regulations shall include:

> Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions....

CAA section 502(b)(6). The EPA's regulations implementing title V require that a permitting authority provide "a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to the EPA and to any other person who requests it." 40 CFR section 70.7(a)(5). As will be discussed below, among other purposes, the statement of basis is intended to support the requirements of CAA section 502(b)(6) by providing information to allow for "expeditious" evaluation of the permit terms and conditions, and by providing information that supports public participation in the permitting process, considering other information in the record.

Since the EPA promulgated its Part 70 regulations, the EPA has provided additional guidance and information surrounding the statement of basis. This information is available on EPA's searchable online database of Title V guidance (*http://www.epa.gov/region07/air/policy/search.htm*). A search of that database reveals numerous documents dating back to 1996 that provide feedback regarding the content of the statement of basis.[1] Because the specific content of the statement of basis depends in part on the terms and conditions of the individual permit at issue, the EPA's regulations are intended to provide flexibility to the state and local permitting authorities regarding content of the statement of basis. The statement of basis is required to contain, as the regulation states, sufficient information to explain the "legal and factual basis for the draft permit conditions." 40 CFR section 70.7(a)(5).

II. Guidance on the Content of Statement of Basis

Since promulgation of the Part 70 regulations, the EPA has provided guidance on recommended contents of the statement of basis. Taken as a whole, various title V petition orders and other documents, particularly those cited in those orders, provide a good roadmap as to what should be

[1] *See, e.g.*, Region 10 Questions & Answers No. 2: Title V Permit Development (March 19, 1996) (available online at *http://www.epa.gov/region07/air/title5/t5memos/r10qa2.pdf*).

included in a statement of basis on a permit-by-permit basis, considering, among other factors, the technical complexity of a permit, history of the facility, and the number of new provisions being added at the title V permitting stage. This guidance document identifies a few such documents for example purposes and provides references for locating such materials on the Internet.

The EPA provided an overview of this guidance in a 2006 title V petition order. *In the Matter of Onyx Environmental Services*, Order on Petition No. V-2005-1 (February 1, 2006) (*Onyx Order*) at 13-14. In the *Onyx Order*, in the context of a general overview statement on the statement of basis, the EPA explained,

> A statement of basis must describe the origin or basis of each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that U.S. EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from simply a straight recitation of applicable requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring that is required under 40 C.F.R. § 70.6(a)(3)(i)(B). Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and U.S. EPA a record of the applicability and technical issues surrounding the issuance of the permit. (Footnotes omitted.) *See, e.g., In Re Port Hudson Operations, Georgia Pacific,* Petition No. 6-03-01, at pages 37-40 (May 9, 2003) *("Georgia Pacific"); In Re Doe Run Company Buick Mill and Mine,* Petition No. VII-1999-001, at pages 24-25 (July 31, 2002) *("Doe Run"); In Re Fort James Camas Mill,* Petition No. X-1999-1, at page 8 (December 22, 2000) (*"Ft. James"*).

Onyx Order at 13-14. In the *Onyx Order*, there is a reference to a February 19, 1999, letter that identified elements which, if applicable, should be included in the statement of basis. In that letter to Mr. David Dixon, Chair of the California Air Pollution Control Officers Association (CAPCOA) Title V Subcommittee, the EPA Region 9 Air Division provided a list of air quality factors to serve as guidance to California permitting authorities that should be considered when developing a statement of basis for purposes of EPA Region 9's review. Specifically, this letter identified the following elements which, if applicable, should be included in the statement of basis:

- additions of permitted equipment which were not included in the application,
- identification of any applicable requirements for insignificant activities or State-registered portable equipment that have not previously been identified at the Title V facility,
- outdated SIP requirement streamlining demonstrations,
- multiple applicable requirements streamlining demonstrations,
- permit shields,
- alternative operating scenarios,
- compliance schedules,
- CAM requirements,

- plant wide allowable emission limits (PAL) or other voluntary limits,
- any district permits to operate or authority to construct permits,
- periodic monitoring decisions, where the decisions deviate from already agreed-upon levels. These decisions could be part of the permit package or could reside in a publicly available document. (Parenthetical omitted)

Enclosure to February 19, 1999, letter from Region 9 to Mr. David Dixon.

In 2001, in a letter from the EPA to the Ohio Environmental Protection Agency, which is also cited to in the *Onyx Order*, the EPA explained that:

> The [statement of basis] should also include factual information that is important for the public to be aware of. Examples include:
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> 1. A listing of any Title V permits issued to the same applicant at the plant site, if any. In some cases it may be important to include the rationale for determining that sources are support facilities.
> 2. Attainment status.
> 3. Construction and permitting history of the source.
> 4. Compliance history including inspections, any violations noticed, a listing of consent decrees into which the permittee has entered and corrective action(s) taken to address noncompliance.

Letter from Stephen Rothblatt, EPA Region 5 to Robert Hodanbosi, Ohio EPA, December 20, 2001 (available online at *http://www.epa.gov/region07/air/title5/t5memos/sbguide.pdf*). In 2002, in the context of finding deficiencies with the State of Texas operating permits program, the EPA explained that, "a statement of basis should include, but is not limited to, a description of the facility, a discussion of any operational flexibility that will be utilized at the facility, the basis for applying the permit shield, any federal regulatory applicability determinations, and the rationale for the monitoring methods selected." 67 FR 732, 735 (January 7, 2002).

The EPA has also addressed statement of basis contents in additional title V petition orders (available in an online searchable database at *http://www.epa.gov/region7/air/title5/petitiondb/petitiondb.htm*). In some cases, title V petition orders provide information even where a statement of basis is not directly at issue. For example, the EPA has interpreted 40 CFR section 70.7(a)(5) to require that the rationale for selected monitoring methods be clear and documented in the permit record. *In the Matter of CITGO Refining and Chemicals Company LP (CITGO)*, Order on Petition No. VI-2007-01 (May 28, 2009) at 7; *see also In the Matter of Fort James Camas Mill* (*Fort James*), Order on Petition No. X-1999-1 (December 22, 2000) at page 8. This type of information could be included in the statement of basis. The EPA observes that where such information is included in the statement of basis, this can facilitate a better understanding of the rationale for monitoring. Such information could also be included in other parts of the permit record. In addition, it is particularly helpful when the statement of basis identifies key issues that the permitting authority anticipates would be a priority for EPA or public review (for example, if such issues represent new conditions or

interpretations of applicable requirements that are not explicit on their face). *See, e.g., In the Matter of Consolidated Edison Co. Of NY, Inc. Ravenswood Steam Plant,* Order on Petition No. II-2001-08 (Sept. 30, 2003) at page 11; *In the Matter of Port Hudson Operation Georgia Pacific,* Order on Petition No. 6-03-01 (May 9, 2003) at pages 37-40; *In the Matter of Doe Run Company Buick Mill and Mine* (*Doe Run*), Order on Petition No. VII-1999-001 (July 31, 2002) at pages 24-26; *In the Matter of Los Medanos Energy Center* (Order on Petition) (May 24, 2004) at pages 14-17.

Each of the various documents referenced above provide generalized recommendations for developing an adequate statement of basis rather than "hard and fast" rules on what to include. Taken as a whole, they provide a good roadmap as to what should be included in a statement of basis on a permit-by-permit basis, considering, among other factors, the technical complexity of the permit, history of the facility, and the number of new provisions being added at the title V permitting stage.[2]

III. Discussion of Statement of Basis Content in Clean Air Act Advisory Committee Final Report on the Title V Implementation Experience

In the EPA's February 8, 2013, memorandum to the OIG, the EPA stated its intent to address the OIG's recommendation concerning the statement of basis, as well as similar recommendations from the Clean Air Act Advisory Committee's Title V Task Force.[3] While this guidance document responds to the 2005 OIG Report, information provided above overlaps with recommendations from the Title V Task Force. This guidance document does not adopt the Task Force recommendations; however, to the extent that they overlap with the discussion above, the EPA provides some observations regarding those recommendations.

Section 5.5 of the Task Force Final Report addresses the statement of basis. This section includes a regulatory background piece, comments from stakeholders, a summary of the Task Force discussions, and Task Force recommendations. The recommendations section includes a list of items considered appropriate for inclusion into a statement of basis. Final Report at 231. Members of the Task Force unanimously supported the recommendations regarding the statement of basis. Because these recommendations overlaps substantially, if not wholly, with guidance previously provided by EPA, it is appropriate to include these recommendations within this guidance document as an additional guideline for developing an adequate statement of basis.

The Task Force recommended that the following items are appropriate for inclusion in a statement of basis document:

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[2] With regard to the title V permitting stage, a best practice includes making previous statements of basis accessible to give background on provisions that already exist in the permit and may not be a part of the permit action at issue, and provide context for the permit as a whole and the particular revisions at issue in that permit action or permit stage.

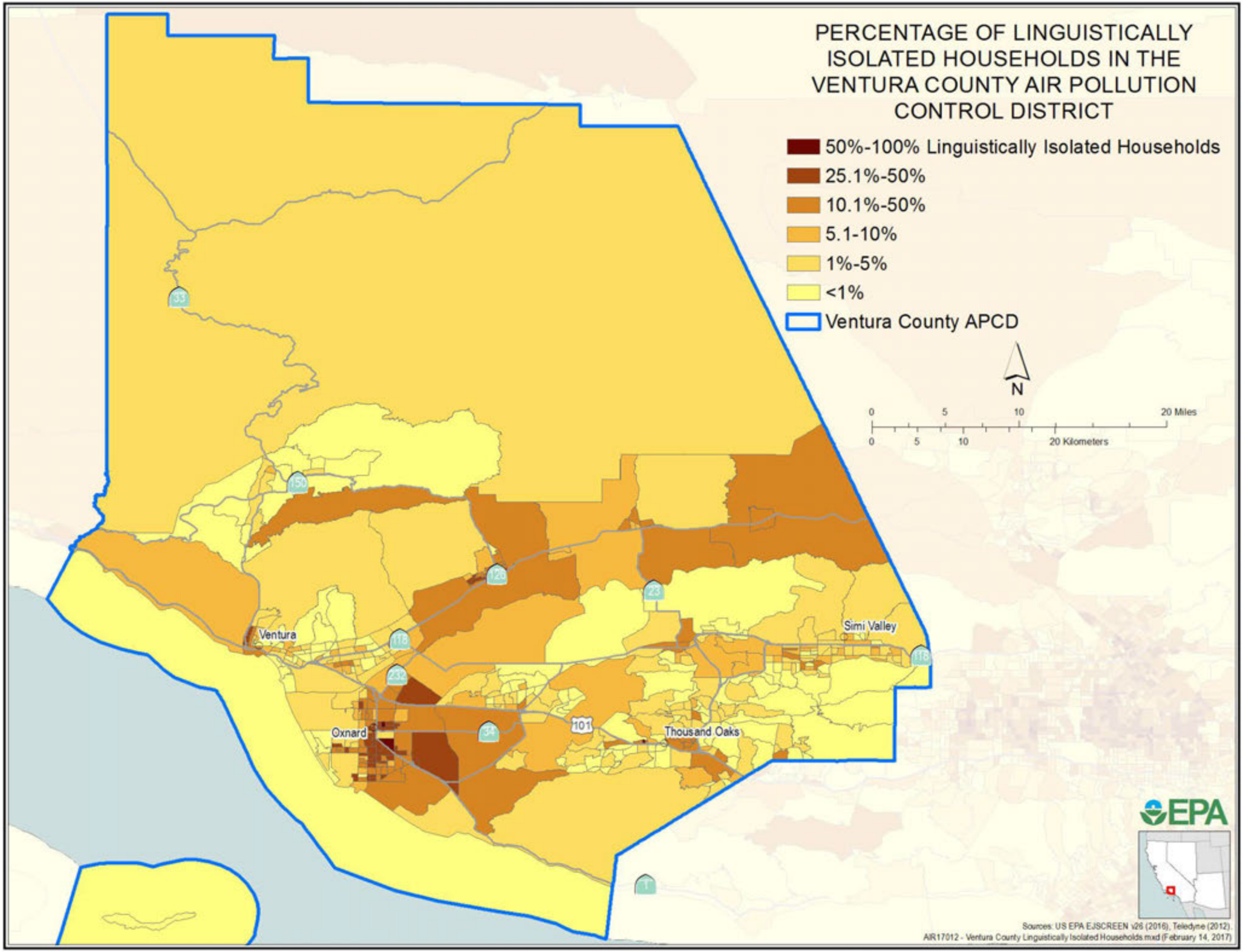
[3] In April 2006, the Title V Task Force finalized a document titled, "Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience." This document was the result of the Task Force's efforts to review the implementation and performance of the operating permit program under title V of the 1990 Clean Air Act Amendments. Included in the report are a number of recommendations, including specific recommendations regarding statement of basis contents that overlap with or are informative to this guidance document.

1. A description and explanation of any federally enforceable conditions from previously issued permits that are not being incorporated into the Title V permit.
2. A description and explanation of any streamlining of applicable requirements pursuant to EPA White Paper No. 2.
3. A description and explanation of any complex non-applicability determination (including any request for a permit shield under section 70.6(f)(1)(ii)) or any determination that a requirement applies that the source does not agree is applicable, including reference to any relevant materials used to make these determinations (e.g., source tests, state guidance documents).
4. A description and explanation of any difference in form of permit terms and conditions, as compared to the applicable requirement upon which the condition was based.
5. A discussion of terms and conditions included to provide operational flexibility under section 70.4(b)(12).
6. The rationale, including the identification of authority, for any Title V monitoring decision.

Task Force Final Report at 231. With regard to these recommendations, the EPA offers several observations. First, there is nothing in the CAA or Part 70 that precludes a permitting authority from including the items listed above in a statement of basis. Not all of those items will apply to every permit action (as is the case with the lists provided by the EPA in the previously-cited guidance documents). Second, concerning item #1, we note that there are very limited circumstances in which a condition from a previously issued permit would not need to be incorporated into the title V permit. Third, concerning item #2, the "White Paper" refers to "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program", dated March 5, 1996 (available online at *http://www.epa.gov/region07/air/title5/t5memos/wtppr-2.pdf*).

In developing the statement of basis, as was discussed earlier, the EPA recommends that permitting authorities consider the individual circumstances of the permit action in light of the regulatory requirements for the permit record in order to determine whether information along the lines of the items identified by the Task Force warrants inclusion into the statement of basis. In making this determination, the permitting authority is encouraged to consider whether the inclusion of such information would provide important explanatory information for the public and the EPA, and bolster the defensibility of the permit (thus improving the efficiency of the permit process and reducing the likelihood of receiving an adverse comment or an appeal), while also ensuring that the statutory and regulatory requirements are being met.

Appendix D. Map of Linguistically Isolated Households in Southern California


PERCENTAGE OF LINGUISTICALLY ISOLATED HOUSEHOLDS IN THE VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT
50%-100% Linguistically Isolated Households
25.1%-50%
10.1%-50%
5.1-10%
1%-5%
<1%
Ventura County APCD
N
0 5 10 20 Miles
0 5 10 20 Kilometers
Ventura
Oxnard
Simi Valley
Thousand Oaks
33
150
126
23
118
232
34
101
1
EPA
Sources: US EPA EJSCREEN v26 (2016), Teledyne (2012).
AIR17012 - Ventura County Linguistically Isolated Households.mxd (February 14, 2017)

Appendix E. Title V Fee Information

VCAPCD PERMIT FEE STRUCTURE

Kerby E. Zozula, Engineering Division Manager March 1, 2017

The purpose of this document is to explain and describe the various fees paid by permitted sources in the Ventura County APCD, including the Part 70 (Title V) permits. It is important to note that the Ventura County APCD had a permitting system 25 years before the start of the Part 70 permitting program as required by Rule 10, "Permits Required", first adopted in 1968. Rule 33, "Part 70 Permits", details the requirements for Part 70 permits and was first adopted in 1993. The Ventura County APCD currently has 1412 permitted sources, of which 23 are Part 70 Permits. As described below, the Ventura County APCD added some additional fees for Part 70 permits in order to recover costs for the extra time spent on these sources due to their additional Part 70 permit requirements.

Annual Emission Fees based on Rule 42, "Permit Fees"

All of the permitted sources (including Part 70 sources) pay an annual emissions fee (renewal fee) as required by Section H of Rule 42, "Permit Fees". The annual emissions fees are calculated based on the source's "permitted emissions" in the units of tons per year and pounds per hour. Permitted emissions are defined in Rule 29, "Conditions on Permits" and generally fall between actual emissions and unlimited potential emissions. Permitted emissions in the units of tons per year are also used to calculate emission offsets required by Rule 26, "New Source Review". These fees currently total approximately $2.4 million dollars per year and are a significant portion of the APCD's annual revenue.

Source Testing Fees based on Rule 47, "Source Test, Emission Monitor, and Call-back Fees"

If required, permitted sources pay fees as required by Rule 47. Rule 47 includes fees for observing source tests conducted by third-party testing companies and reviewing and approving the required source testing protocols and source test reports. There are no specific Part 70 permit fees, but many Part 70 permits have requirements for continuous emissions monitors and Rule 47 requires fees for emission monitor inspections.

Rule 47 fees are based in part on the hours spent with the requirement that "*The hourly fee shall be assessed at the hourly service rate for an Air Quality Engineer as approved by the Ventura County Air Pollution Control Board, times 1.3*". For the APCD's fiscal year 2016-2017 this fee is currently $131.00 per hour. This fee and its derivation are described in the attached "Ventura County Air Pollution Control District Service Rates and Fees – FY 2016-2017".

Permit Processing Fees based on Rule 42, Permit Fees"

Ventura County APCD Rule 10, "Permits Required", has a two-step permitting requirement, Authority to Construct followed by Permit to Operate. Each step of the process requires separate application forms and fees. Part 70 permits must first obtain an Authority to Construct as required by Rule 10.A. An application to modify a Part 70 permit would be a part of the Permit to Operate application process required by Rule 10.B. As detailed in Rule 14, "Action on

Applications for a Permit to Operate", a temporary Permit to Operate is issued within 30 days of receipt of the application.

The filing fee for each Authority to Construct application and each Permit to Operate application is $450.00 as required by Rule 42.A. Rule 42.A also requires a filing fee of $225.00 for an administrative change to a Permit to Operate, an Authority to Construct or a Certificate of Emission Reduction Credits. Note that Rule 42.A requires a higher filing fee of $450.00 (rather than $225.00) for Part 70 administrative permit amendments.

Rule 42.B.2 details the requirements for permit processing fees (in addition to filing fees) for applications for Authority to Construct, Permit to Operate where specified, and Emission Reduction Credits. As described above, fees are based in part on the hours spent with the requirement that "*The hourly fee shall be assessed at the hourly service rate for an Air Quality Engineer as approved by the Ventura County Air Pollution Control Board, times 1.3*".

As described in Rule 42.B.2.b: "*In addition, for Part 70 permit applications, the processing fee shall include the fee specified in Subsection B.2.a.*" This fee is specifically an additional fee for Permit to Operate applications for a Part 70 permit. This Permit to Operate application fee is not required for non-Part 70 permits. The Ventura County APCD added this fee because Permit to Operate applications for Part 70 permit require more hours of staff time as compared to non-Part 70 permits. Part 70 permits are "longer" and more complex than non-Part 70 permits. Part 70 permit applications require additional details and documentation, more revisions to the permit's various sections, and often requires additional letters to EPA or public newspaper notice.

Because of the permit processing fee described above for Part 70 Permit to Operate applications, all staff time spent on Part 70 permit applications (both Authority to Construct and Permit to Operate) is invoiced as a fee to the Part 70 permit holder.

Permit Inspection Fees

As discussed above, Rule 47 requires fees for inspections such as source tests and the inspection of emission monitors. The Ventura County APCD conducts a field inspection on each permitted facility approximately once per year and may conduct additional inspections in response to a nuisance or odor complaint. The costs of the annual field inspection are not charged to the permitted source unless there are fees as detailed in Rule 47.

For Title V permit holders, the Ventura County APCD added Section O of Rule 42, "Permit Fees" for the review of the annual Part 70 Compliance Certification pursuant to Section C of Rule 33.9. This Rule 42.O fee is based on "*the actual hours spent by District staff reviewing and approving the compliance certification. The fee shall be assessed at the hourly service rate for an Air Quality Engineer as approved by the Ventura County Air Pollution Control Board, times 1.3. The hourly service rate shall be the rate in effect at the time the Compliance Certification application is deemed complete.*" As discussed above, this fee and its derivation are described in the attached "Ventura County Air Pollution Control District Service Rates and Fees – FY 2016-2017".

VENTURA COUNTY
AIR POLLUTION CONTROL DISTRICT

SERVICE RATES AND FEES

FY 2016-2017

MICHAEL VILLEGAS
EXECUTIVE OFFICER

VENTURA COUNTY
AIR POLLUTION CONTROL DISTRICT

SERVICE HOURLY RATES AND FEES
FY 2016-2017

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SUMMARY

VENTURA COUNTY
AIR POLLUTION CONTROL DISTRICT
SUMMARY OF SERVICE RATES AND FEES
FY 2016-2017

	FY 2015-2016 RATES	FY 2016-2017 RATES
SERVICE RATES		
1. Hourly Rates		
a. Air Quality Engineer This rate applies to Authority to Construct and Permit to Operate fees only. State law limits fee increases to fifteen percent in any calendar year (H&SC Sec 41512.7).	128.00	131.00
b. Air Quality Engineer (all others)	128.00	131.00
c. Air Quality Specialist (Composite)	108.00	110.00
d. Air Quality Instrument Technician (Composite)	106.00	108.00
DUPLICATION FEES		
1. Copies of Public Records This rate applies to the Public Records Act Gov. Code Sec. 6250, et esq.		
a. Less than ten pages	No Fee	No Fee
b. Ten or more pages including the first nine	0.17	0.17
2. Compilation of District Information Request to the District for information that require analysis and summary of District records is not a request for an existing identifiable record, and, therefore, is not subject to the Public Records Act. The District may agree to create a new report, summary or data compilation only if the requestor agrees to compensate the District for all costs associated with this task, including but not limited to, staff time incurred in creating the new report, summary, or data compilation. No information shall be released until such costs are paid.		Full cost recovery
3. Subpoenaed Records Section 1563 of the Evidence Code prescribes the statutory fees for providing records in response to a subpoena. The statutory fees are as follows:		
a. Each Page	0.10	0.10
b. Per Person of Clerical Cost (billed in quarter hour increments of $6)	24.00/hr max	24.00/hr max
c. Copying documents from microfilm, each page	0.20	0.20
d. Actual postage charges		
e. Actual costs for reproducing oversized documents, or those requiring special processing		
f. Actual costs incurred for retrieval of records from storage		

SERVICE RATES

VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT

BUDGETED HOURLY RATES CALCULATION (BY CLASSIFICATION)

BASED ON FY 2016-2017 ADOPTED BUDGET

FY 2016-2017 SERVICE HOURLY RATES

CLASS CODE	CLASSIFICATION TITLE	# 0F POS FTE	TOTAL ANNUAL SALARY BY CLASS	AVERAGE ANNUAL SALARY	ADJUSTED HOURLY RATE
1,800.0	= AVERAGE PRODUCTIVE HOURS				
1184	FISCAL ASSISTANT IV	1.0	47,590	47,590	$ 26.44
9101	AIR POLLUTION CONTROL OFFICER	1.0	192,140	192,140	106.74
9102	MGR. FISCAL/ADMIN SRVCS	1.0	114,810	114,810	63.78
9104	MGR. OFFICE SYSTEMS	1.0	109,840	109,840	61.02
9105	MGR. PUBLIC INFO SRVCS	1.0	75,530	75,530	41.96
9157	MGR. ENGINEERING	1.0	118,550	118,550	65.86
9158	MGR. MONITORING	1.0	114,110	114,110	63.39
9143	MGR. COMPLIANCE	1.0	115,660	115,660	64.26
9144	MGR. PLANNING & RULES	1.0	115,420	115,420	64.12
9106	FISCAL OFFICER	1.0	96,730	96,730	53.74
9121	AQ ENGINEER II	6.0	543,520	90,587	50.33
9122	SUPERVISING AQ ENGINEER	1.0	103,720	103,720	57.62
9132	PERMIT PROCESSING SPECIALIST I/II	2.0	155,146	77,573	43.10
9141	AQ SPECIALIST II	12.0	1,057,070	88,089	48.94
9142	SUPERVISING AQ SPECIALIST	3.0	290,940	96,980	53.88
9151	AQ METEOROLOGIST I	1.0	61,644	61,644	34.25
9156	MGMT ASSISTANT IV-CC	1.0	62,390	62,390	34.66
9172	AQ INSTRUMENT TECHNICIAN III	2.0	180,430	90,215	50.12
9173	SUPERVISING AQ INSTRUMENT TECH	1.0	96,980	96,980	53.88
9176	AQ TECHNICIAN I/ II	1.0	60,930	60,930	33.85
9182	OFFICE SYSTEM COORDINATOR III	4.0	312,590	78,148	43.42
9186	MANAGEMENT ASSISTANT II	1.0	46,560	46,560	25.87
9195	OFFICE ASSISTANT IV	1.0	45,830	45,830	25.46
9195	OFFICE ASSISTANT III	1.0	45,830	45,830	$ 25.46
Note: not included - 1 FTE for Fund O701 - Pass Through Grants					
	TOTAL	**47.0**			

SOURCE: FY 2016-2017
ADOPTED BUDGET- STAFFING DETAIL

Step 4

VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT

SERVICE AND SUPPLIES WORKSHEET

BASED ON FY 2016-2017 ADOPTED BUDGET

FY 2016-2017 SERVICE HOURLY RATES

DESCRIPTION		CHARGEABLE SERVCES AND SUPPLIES (in thousands)
BUDGETED SERVICES AND SUPPLIES (FUND O700/ACCT. 2000 LEVEL)	$	1,906.70
LESS: NON-CHARGEABLE ITEMS		
DESCRIPTION		
2158 COST ALLOCATION PLAN (A-87)		(72.2)
2181 BOARD MEMBER FEES		(2.0)
2183 PASS-THROUGH GRANT (VCTC)		(75.0)
2209 BOARD HEARING FEES (REFUNDED)		(4.3)
Revenue Offset to Expenditures		
9761 SUBSCRIPTIONS AND PUBLICATIONS		0.0
NET SERVICES & SUPPLIES (To Step 5)	$	**1,753.21**

VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT

ESTIMATED CONTRACT HOURLY RATES

FOR EACH PERSONNEL CLASSIFICATION

FY 2016-2017 SERVICE HOURLY RATES

CLASS CODE	CLASSIFICATION TITLE	# OF POS FTE	ANNUAL BUDGETED SALARY (ACCT. 1101)	ANNUAL AVERAGE BY CLASS	ADJUSTED HOURLY RATE	CONTRACT HOURLY RATE
1,800.0	= AVERAGE PRODUCTIVE HOURS					
154.2%	= OVERHEAD RATE for AQ Engineer					
148.1%	= OVERHEAD RATE for AQ Specialist					
145.1%	= OVERHEAD RATE Monitoring - AQ Instrument Tech and AQ Metcorologist					
136.9%	= OVERHEAD RATE all Others					
1184	FISCAL ASSISTANT IV	1.0	47,590	47,590	$ 26.44	62.63
9101	AIR POLLUTION CONTROL OFFICER	1.0	192,140	192,140	$ 106.74	252.88
9102	MGR. FISCAL/ADMIN SRVCS	1.0	114,810	114,810	$ 63.78	151.11
9104	MGR. OFFICE SYSTEMS	1.0	109,840	109,840	$ 61.02	144.56
9105	MGR. PUBLIC INFO SRVCS	1.0	75,530	75,530	$ 41.96	99.41
9157	MGR. ENGINEERING	1.0	118,550	118,550	$ 65.86	167.44
9158	MGR. MONITORING	1.0	114,110	114,110	$ 63.39	150.18
9143	MGR. COMPLIANCE	1.0	115,660	115,660	$ 64.26	157.47
9144	MGR. PLANNING & RULES	1.0	115,420	115,420	$ 64.12	163.02
9106	FISCAL OFFICER	1.0	96,730	96,730	$ 53.74	127.31
9121	AQ ENGINEER II	6.0	543,520	90,587	$ 50.33	127.95
9122	SUPERVISING AQ ENGINEER	1.0	103,720	103,720	$ 57.62	146.50
9132	PERMIT PROCESSING SPECIALIST I/II	2.0	155,146	77,573	$ 43.10	105.62
9141	AQ SPECIALIST II	12.0	1,057,070	88,089	$ 48.94	124.42
9142	SUPERVISING AQ SPECIALIST	3.0	290,940	96,980	$ 53.88	136.98
9151	AQ METEOROLOGIST I	1.0	61,644	61,644	$ 34.25	83.93
9156	MGMT ASSISTANT IV-CC	1.0	62,390	62,390	$ 34.66	82.11
9172	AQ INSTRUMENT TECHNICIAN III	2.0	180,430	90,215	$ 50.12	122.83
9173	SUPERVISING AQ INSTRUMENT TECH	1.0	96,980	96,980	$ 53.88	132.04
9176	AQ TECHNICIAN I/ II	1.0	60,930	60,930	$ 33.85	80.19
9182	OFFICE SYSTEM COORDINATOR III	4.0	312,590	78,148	$ 43.42	102.85
9186	MANAGEMENT ASSISTANT II	1.0	46,560	46,560	$ 25.87	61.28
9195	OFFICE ASSISTANT IV	1.0	45,830	45,830	$ 25.46	60.32
9195	OFFICE ASSISTANT III	1.0	45,830	45,830	$ 25.46	60.32

Computation of composite rate for Air Quality Engineers (AQ Engr. and Supv AQ Engr.): **130.6** **OR** **131.00**

Computation of composite rate for Air Quality Specialist (AQ Spec and Supv AQ Spec): **123.9** **OR** **124.00**

Computation of composite rate for Air Quality Intrument Technicians (AQ Inst Tech and Supv AQ Inst Tech): (AQ Monitoring) **125.9** **OR** **126.00**

VENTURA COUNTY
AIR POLLUTION CONTROL DISTRICT
SERVICE HOURLY RATES
FISCAL YEAR 2016-2017

STEP 1: **PRODUCTIVE HOURS**

The standard 1800 hours is used for productive hours.

STEP 2: **SALARY CALCULATIONS**

1. Obtain number of positions by classification from the budget allocation.
2. Obtain budgeted salary by classification.
3. Compute the Average Annualized Salary (#2 divided by #1).
4. Compute the Adjusted Hourly Rate (#3 divided by Average Productive Hours obtained from Step 1 above).

NOTE: Partial (or Increment #2) positions, if any, are annualized.

STEP 3: **CHARGEABLE SALARY WORKSHEET**

Information is taken from the requested budget (or the recommended budget or approved budget, if available), both at the Expenditure/Revenue Detail – Budget Unit Rollup and the Position/Staffing Detail – Budget Unit Rollup. Add **Overtime and Supplemental Payments, if any.**

Standard Computation:

a.) **CHARGEABLE SALARY for Engineer** - Budgeted salaries less salary of Air Pollution Control Officer (APCO), Managers, Fiscal Officer, Information Systems Coordinators, one (1) Air Quality (AQ) Technician, one (1) Permit Processing Specialist and Clerical Support to arrive at CHARGEABLE SALARY for AQ Engineers.

b.) **CHARGEABLE SALARY for AQ Specialist** - Budgeted salaries less salary of Air Pollution Control Officer (APCO), Managers, Fiscal Officer, Information Systems Coordinators, one (1) Air Quality (AQ) Technician, and Clerical Support (excluding Management Assistant II) to arrive at CHARGEABLE SALARY for AQ Specialist.

c.) **CHARGEABLE SALARY for AQ Monitoring** - Budgeted salaries less salary of Air Pollution Control Officer (APCO), Managers, Fiscal Officer, Information Systems Coordinators, and Clerical Support (excluding Management Assistant II) to arrive at CHARGEABLE SALARY for AQ Monitoring.

b) **OVERHEAD RATE for AQ Specialist** = Total Overhead Cost (including one AQ Technician salary) divided by Chargeable Salary (b) from Step #3.

c) **OVERHEAD RATE for AQ Monitoring** = Total Overhead Cost (excluding AQ Technician and Management Assistant II) divided by Chargeable Salary (c) from Step #3.

d) **OVERHEAD RATE for All Others** = Total Overhead Cost (excluding AQ Technician and Management Assistant II) divided by Chargeable Salary (d) from Step #3

STEP 6: **SERVICE HOURLY RATE CALCULATION**

a) Adjusted Hourly Rate from Step #2 plus the Overhead Rate (a) from Step #5 equals SERVICE HOURLY RATE for AQ Engineer.

b) Adjusted Hourly Rate from Step #2 plus the Overhead Rate (b) from Step #5 equals SERVICE HOURLY RATE for AQ Specialist.

c) Adjusted Hourly Rate from Step #2 plus the Overhead Rate (c) from Step #5 equals SERVICE HOURLY RATE for AQ Monitoring.

d) Adjusted Hourly Rate from Step #2 plus Overhead Rate (d) from Step #5 equals SERVICE HOURLY RATE for All Others.

STEP 7: **SUMMARY LISTING**

A **Summary Sheet** is prepared listing the individual estimated Service Hourly Rate for each classification (or a composite rate for two or more classifications) chosen to be listed in the same sheet presented to the Air Pollution Control Board for approval and adoption.

The fees for authority to construct and permit to operate are limited to the state law limit of fifteen percent in any year (H&SC Sec.41512.7). This rate is identified as a separate line item. The fifteen percent limit is also applicable to the multiplier included in Rule 42.

DUPLICATION FEES

VENTURA COUNTY
AIR POLLUTION CONTROL DISTRICT
DUPLICATION FEE CALCULATION
FISCAL YEAR 2016-2017

PUBLIC RECORDS ACT - DUPLICATION FEE

The Public Records Act requires the "payment of fees covering direct costs of duplication, or a statutory fee, if applicable." Gov. Code Sec. 6253.

Duplication fee calculations are as follows:

A. GSA copy charge = $0.03 per page

B. District direct cost of labor:

Various staff likely to produce copies is as follows:

Management Assistant II	$24.87
Office Assistant IV	$24.46
Management Assistant IV-Confide	$34.66
Office Assistant III	$24.46
AQ Engineer II	$50.33
AQ Technician II	$33.85
Permit Processing Specialist	$43.10
Supv AQ Specialist	$53.88
AQ Specialist II	$48.94
Average cost of various staff	$37.62

Time it takes to make copies is as follows:

One copy	0.24 minutes
Ten copies	2.40 minutes

Average cost of various staff per minute = $37.62 / 60 minutes = $0.6270
Average direct labor cost per page .24 minute x $0.6270 = $0.15
Average direct labor cost for ten copies 2.40 minutes x $0.6270 = $1.50

B. Summary of costs is as follows:

Average cost per page

Direct Labor Cost per page	$0.150		
GSA per copy charge	$0.030		
Total per page	$0.180	vs.	$0.17 in FY 2015-16

Average cost for ten copies

Direct Labor Cost per page	$1.50
GSA per copy charge	$0.03
Total per page	$1.53

The District is recommending no charge for the first nine pages and $0.17 per page including the first nine for more than nine pages. This is the same charge in the prior fiscal year.

VENTURA COUNTY
AIR POLLUTION CONTROL DISTRICT
SUBPOENAED DISTRICT INFORMATION
FISCAL YEAR 2016-2017

FEES FOR SUBPOENAED RECORDS

The prescribed statutory fees for providing records in response to a subpoena are established by law in Evidence Code Section 1563. The statutory fees are as follows:

1) 10 cents per page for reproducing documents of a size 8 ½ by 14 inches or less;
2) 20 cents per page for copying documents from microfilm;
3) Actual costs for reproducing oversized documents or those requiring special processing;
4) Per person of clerical cost set at a maximum rate of $24 per hour, billed in quarter hour increments of $6;
5) Actual postage charges; and
6) Actual costs incurred for retrieval and return of records held offsite.

MISCELLANEOUS FEES

VENTURA COUNTY
AIR POLLUTION CONTROL DISTRICT
PROCEDURES AND FEE CALCULATION FOR RECEIVING BAD CHECKS
FISCAL YEAR 2016-2017

PROCEDURES FOR RECEIVING BAD CHECKS

The County Treasurer will deposit a check in the bank two times before notifying the District of the NSF check.

a) Identify the Cash Receipt the NSF check goes with and give County Treasurer the appropriate accounting information for reversal.
(5 minutes)

b) Notify the appropriate division and see if they want to handle it or have Fiscal take care of it. Compliance Division usually likes to handle their own NSF checks depending on the circumstances. Engineering Division usually has Fiscal take care of it. **(10 minutes)**

c) Go to the Accounts Receivable System

1. Click on the Allocation Tab
2. Type in the receipt number and find the receipt
3. Click on Transfer
4. Click on the transaction type and change to NSF
5. Click on Transfer
6. Click on the Allocation in Progress tab
7. Change the invoice number to 'Others'
8. Change the category to 'NSF'

(5 minutes)

d) Call the check writer to inform them the check is NSF and we require replacement plus NSF fee in cash or money order. Give a repayment date and let them know if they will be accruing penalty fees. Call the party if not paid by the due date and give an alternative date to pay. If not paid by the alternative date, give to Compliance Division (Supervising AQ Specialist-Settlement Officer) for collection.
(20 minutes)

e) After receiving the replacement check, re-enter as a deposit, note both old and new receipts for cross-reference. Mail the original check back to customer.
(5 minutes)

VENTURA COUNTY
AIR POLLUTION CONTROL DISTRICT

WITNESS FEES
FISCAL YEAR 2016-2017

FEES FOR SUBPOENAED WITNESS

Pursuant to California Code Section 68096.1, the party at whose request the subpoena is issued shall reimburse the local agency for the full cost incurred in paying the employee's salary or other compensation and traveling expenses for each day the employee is required to remain in attendance as a witness pursuant to the subpoena.

In addition, the amount of two hundred seventy five ($275), together with the subpoena, shall be paid to the local agency for each day the employee is required to remain in attendance pursuant to the subpoena.

If the actual expense is less that the amount paid, the excess of the amount paid shall be refunded. Likewise, if the actual expense is more than the amount paid, the difference shall be paid to the local agency by the party at whose request the subpoena was issued.

VENTURA COUNTY APCD - REVENUE ANALYSIS

FUND O700 FY2017 REVENUE RECOGNIZED

ACCT #	ACCOUNT TITTLE	ADJUSTED BUDGET	CURRENT FY 16-17	CURRENT FY 15-16	CURRENT FY 14-15	CURRENT FY 13-14	CURRENT FY 12-13
8721	EMISSION FEES	2,400,000.00					
	AP01- JUL		(29,228.83)	18,480.94	288,907.62	178,214.19	121,464.18
	AP02 - AUG		465,774.36	242,149.20	94,901.96	155,177.75	93,030.71
	AP03 - SEP		103,385.30	83,758.97	87,325.33	91,200.35	79,338.60
	AP04 - OCT		98,854.41	140,745.10	133,120.91	185,597.63	116,755.98
	AP05 - NOV		153,430.43	137,067.53	97,960.87	94,382.29	61,110.83
	AP06 - DEC		108,441.93	167,600.02	85,741.19	97,047.66	64,526.37
	AP07 - JAN			149,642.49	194,313.44	172,417.24	137,455.81
	AP08 - FEB			105,805.89	316,093.07	328,999.17	164,485.22
	AP09 - MAR			461,041.82	131,221.32	203,068.80	329,984.49
	AP10 - APR			207,341.14	475,996.27	220,827.28	256,765.44
	AP11 - MAY			243,580.28	115,398.96	263,765.20	147,742.60
	AP12 - JUN			219,069.33	108,824.32	126,295.27	390,452.97
	AP13			143,805.00	235,345.00	147,760.00	145,651.00
	AP14						
	TOTAL LINE ITEM	**2,400,000.00**	**900,657.60**	**2,320,087.71**	**2,365,150.26**	**2,264,752.83**	**2,108,764.20**
	accrued: $143,805						

RULE 42.A PERMIT RENEWAL

↑ ANNUAL EMISSION FEES FROM ALL PERMIT HOLDERS ↑

8722	AG ENGINE PERMITS	52,000.00					
	AP01- JUL		(12,160.00)	(7,760.00)	(13,490.00)	(14,580.00)	(11,970.00)
	AP02 - AUG		1,800.00	200.00	400.00	400.00	1,200.00
	AP03 - SEP		400.00		1,400.00	600.00	
	AP04 - OCT			400.00	200.00		
	AP05 - NOV				400.00		
	AP06 - DEC			200.00	200.00	200.00	
	AP07 - JAN			868.00	400.00		
	AP08 - FEB			1,932.00	1,000.00	1,200.00	1,600.00
	AP09 - MAR			600.00	2,200.00	10,200.00	30,600.00
	AP10 - APR			22,600.00	43,600.00	30,000.00	13,800.00
	AP11 - MAY			18,600.00	4,600.00	2,600.00	
	AP12 - JUN			400.00	3,200.00	6,600.00	600.00
	AP13			12,160.00	8,360.00	13,490.00	15,580.00
	AP14						
	TOTAL LINE ITEM	**52,000.00**	**(9,960.00)**	**50,200.00**	**52,470.00**	**50,710.00**	**51,410.00**
	Accrued: $12,160						

AGRICULTURAL ENGINE REGISTRATION RULE 250 (NOT TITLE V)

↓ PERMIT PROCESSING FEES ↓

8731	PERMITS (A-C/P-O)	675,000.00					
	AP01- JUL		(6,913.00)	(2,760.00)	1,304.66	17,455.57	(1,942.23)
	AP02 - AUG		14,978.80	19,133.89	40,579.42	27,845.42	25,225.19
	AP03 - SEP		8,571.00	7,915.21	21,705.00	41,317.81	21,498.28
	AP04 - OCT		6,224.40	13,450.00	34,294.27	33,756.86	31,395.27
	AP05 - NOV		7,625.00	7,848.20	25,520.00	22,022.02	23,635.04
	AP06 - DEC		18,620.80	7,390.30	31,008.20	25,447.00	30,398.62
	AP07 - JAN			15,392.30	21,513.28	30,298.79	15,147.78
	AP08 - FEB			14,663.80	14,400.60	24,256.18	25,801.78
	AP09 - MAR			15,078.60	28,500.13	42,371.02	47,523.46
	AP10 - APR			14,803.00	32,134.87	40,703.45	28,296.99
	AP11 - MAY			15,257.40	15,383.40	38,394.15	40,360.97
	AP12 - JUN			15,041.40	34,192.44	41,576.62	30,483.24
	AP13			15,238.00	20,485.00	23,834.00	20,929.00
	AP14						
	TOTAL LINE ITEM	**675,000.00**	**49,107.00**	**158,452.10**	**321,021.27**	**409,278.89**	**338,753.39**
	accrued: $15,238						

RULE 42.A + RULE 42.B

↑ These are SC/PO permit processing fees. Title V permits are included (modifications and re-issuance). As we discussed only Title V permit holders pay fees when implementing an Authority to Construct into a Permit to Operate.

VENTURA COUNTY APCD - REVENUE ANALYSIS

FUND O700 FY2017 REVENUE RECOGNIZED

ACCT #	ACCOUNT TITTLE	ADJUSTED BUDGET	CURRENT FY 16-17	CURRENT FY 15-16	CURRENT FY 14-15	CURRENT FY 13-14	CURRENT FY 12-13
8761	RULE 47	205,000.00					
	AP01- JUL		(2,301.80)	(4,860.04)	2,087.00	(12,775.15)	(6,121.00)
	AP02 - AUG		22,557.00	22,298.44	16,786.80	22,039.51	28,673.91
	AP03 - SEP		12,733.00	16,377.60	14,905.00	17,851.85	17,266.11
	AP04 - OCT		9,482.80	19,494.20	17,992.00	18,514.40	12,340.10
	AP05 - NOV		10,463.40	10,399.20	15,591.76	7,657.10	12,466.10
	AP06 - DEC		18,453.00	31,496.92	17,569.80	20,766.00	16,256.60
	AP07 - JAN			17,639.00	18,870.84	14,335.00	16,023.75
	AP08 - FEB			20,414.40	12,722.60	14,798.00	13,106.20
	AP09 - MAR			32,904.76	26,538.76	26,565.00	21,448.15
	AP10 - APR			12,146.80	27,792.20	37,204.00	27,671.10
	AP11 - MAY			21,805.00	27,701.20	18,133.00	30,718.80
	AP12 - JUN			23,783.64	20,409.84	17,611.00	17,148.15
	AP13			17,119.00	23,443.00	24,026.00	34,449.00
	AP14						
	TOTAL LINE ITEM	**205,000.00**	**71,387.40**	**241,018.92**	**242,410.80**	**226,725.71**	**241,446.97**

R1647 (all permits)

Rule 47 was approved by the APCD Board on June 22, 1999.
accrued: $17,119

8771	ASBESTOS FEES	18,000.00					
	AP01- JUL		915.00	1,070.00	2,910.00	1,530.00	995.00
	AP02 - AUG		2,220.00	3,290.00	2,745.00	2,070.00	1,530.00
	AP03 - SEP		1,760.00	2,835.00	1,915.00	1,375.00	1,300.00
	AP04 - OCT		1,985.00	2,985.00	1,530.00	1,145.00	2,680.00
	AP05 - NOV		1,525.00		4,360.00	1,685.00	1,759.00
	AP06 - DEC		2,140.00	2,675.00	3,285.00	3,135.00	2,675.00
	AP07 - JAN			3,365.00	5,125.00	1,840.00	1,835.00
	AP08 - FEB			2,215.00	2,450.00	1,605.00	690.00
	AP09 - MAR			2,070.00	2,830.00	1,760.00	1,915.00
	AP10 - APR			835.00	2,140.00	3,515.00	1,455.00
	AP11 - MAY			2,445.00	3,975.00	1,455.00	2,065.00
	AP12 - JUN			3,670.00	2,910.00	2,595.00	2,600.00
	AP13						
	AP14						
	TOTAL LINE ITEM	**18,000.00**	**10,545.00**	**27,455.00**	**36,175.00**	**23,710.00**	**21,499.00**

Asbestos

8772	AIR TOXICS HOT SPOTS FE	12,000.00					
	AP01- JUL		(4,936.00)	(1,801.00)	(1,085.00)	(60.00)	(846.00)
	AP02 - AUG		1,150.00			377.00	210.00
	AP03 - SEP			(1,110.00)			
	AP04 - OCT						
	AP05 - NOV						
	AP06 - DEC		85.00				
	AP07 - JAN						
	AP08 - FEB						
	AP09 - MAR			170.00			6,740.00
	AP10 - APR					12,766.00	9,024.00
	AP11 - MAY			(170.00)	7,881.00	3,632.00	2,148.00
	AP12 - JUN			16,240.00	9,006.00	(75.00)	(2,215.00)
	AP13			6,754.00	1,886.00	1,085.00	437.00
	AP14						
	TOTAL LINE ITEM	**12,000.00**	**(3,701.00)**	**20,083.00**	**17,688.00**	**17,725.00**	**15,498.00**

STATE AB-2588

Accrued: $6,754

VENTURA COUNTY APCD - REVENUE ANALYSIS

FUND O700 FY2017 REVENUE RECOGNIZED

ACCT #	ACCOUNT TITTLE	ADJUSTED BUDGET	CURRENT FY 16-17	CURRENT FY 15-16	CURRENT FY 14-15	CURRENT FY 13-14	CURRENT FY 12-13
8798	Title V Certification	16,000.00					
	AP01- JUL		84.60	22.10	(2,448.00)	(2,352.85)	(373.37)
	AP02 - AUG			4,263.74	1,399.45	1,005.55	1,972.42
	AP03 - SEP		2,329.60		2,605.20	3,198.00	2,436.53
	AP04 - OCT		2,870.40			1,708.85	3,906.18
	AP05 - NOV				1,644.24		
	AP06 - DEC			2,662.40	201.50	2,869.02	425.43
	AP07 - JAN				403.00	1,482.73	696.16
	AP08 - FEB				362.70		812.17
	AP09 - MAR			582.40			1,856.41
	AP10 - APR			5,241.60	523.90	2,964.00	1,856.41
	AP11 - MAY			3,286.40	7,657.00	1,209.00	1,268.54
	AP12 - JUN			6,323.20	523.90	1,817.40	812.18
	AP13			1,621.00	1,066.00	3,306.00	3,049.00
	AP14						
	TOTAL LINE ITEM	**16,000.00**	**5,284.60**	**24,002.84**	**13,938.89**	**17,207.70**	**18,718.06**
	accrued: $1,621						

TITLE V ONLY

RULE 42.0

↑ RULE 42.0 TITLE V ONLY ↑

8799	VARIANCE	7,000.00					
	AP01- JUL		100.00	(1,573.00)	225.00	(25.00)	(2,606.00)
	AP02 - AUG		1,609.24	1,780.20	601.59	350.00	100.00
	AP03 - SEP		1,873.47		1,355.89	300.00	
	AP04 - OCT		150.00		100.00	3,751.02	
	AP05 - NOV				600.60		
	AP06 - DEC		1,654.55	1,016.49		1,224.34	
	AP07 - JAN						598.97
	AP08 - FEB						
	AP09 - MAR				300.00		1,671.54
	AP10 - APR				1,058.44	300.00	
	AP11 - MAY			100.00			
	AP12 - JUN			904.62	2,104.20	1,697.78	
	AP13				1,573.00	25.00	25.00
	AP14						
	TOTAL LINE ITEM	**7,000.00**	**5,387.26**	**2,228.31**	**7,918.72**	**7,623.14**	**(210.49)**
	Accrued: $1,573						

8821	FINES	100,000.00					
	AP01- JUL		7,700.00	13,591.20	11,000.00	21,800.00	33,400.00
	AP02 - AUG		15,650.00	31,850.00	23,800.00	23,500.00	6,850.00
	AP03 - SEP		5,900.00	18,100.00	331,115.30	15,150.00	37,050.00
	AP04 - OCT		18,250.00	35,000.00	87,550.00	4,000.00	15,300.00
	AP05 - NOV		65,450.00	18,250.00	8,800.00	8,200.00	7,150.00
	AP06 - DEC		6,250.00	71,050.00	2,950.00	7,150.00	23,300.00
	AP07 - JAN			8,400.00	19,400.00	14,500.00	79,225.00
	AP08 - FEB			5,400.00	17,800.00	5,300.00	12,700.00
	AP09 - MAR			14,600.00	189,350.00	44,250.00	9,450.00
	AP10 - APR			9,100.00	14,250.00	6,250.00	18,950.00
	AP11 - MAY			25,370.00	24,400.00	3,550.00	141,281.00
	AP12 - JUN			24,800.00	11,400.00	11,950.00	11,870.00
	AP13						
	AP14						
	TOTAL LINE ITEM	**100,000.00**	**119,200.00**	**275,511.20**	**741,815.30**	**165,600.00**	**396,526.00**

NOTICES OF VIOLATION

Appendix F. VCAPCD Comments on the Draft Report

Ventura County
Air Pollution
Control District

669 County Square Drive
Ventura, California 93003

tel 805/645-1400
fax 805/645-1444
www.vcapcd.org

Michael Villegas
Air Pollution Control Officer

July 12, 2017

Mr. Gerardo Rios, Chief
Permits Office (AIR-3)
Office of Air Division
EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105

Subject: Ventura County APCD Responses to Draft Title V Program Evaluation Report

Dear Mr. Rios:

The Ventura County Air Pollution Control District (VCAPCD) has reviewed the subject Draft Title V Program Evaluation Report dated June 15, 2017. The VCAPCD appreciates the time and effort spent by you and your staff in evaluating our Title V Program.

The VCAPCD does not have any significant comments on this draft report. We appreciate your positive comments and have already started implementing some of your recommendations. For example, the VCAPCD Title V website now includes the current versions of all 23 Title V permits and also has additional information regarding public participation in the permit review process including the Part 70 Notification List and the public's right to petition the EPA Administrator to object to a Title V permit. Our specific comments on a few of your findings and recommendations are as follows:

Finding / Recommendation 2.8 Regarding 40 CFR Part 60, Subpart OOOO

The VCAPCD acknowledges this recommendation and will begin work to improve the enforceability of Attachment 40CFR60OOOO. To assist us in our efforts, we request that you provide us with examples of acceptable terms and conditions from other Title V permits in California and/or other states that you may be aware of.

With the adoption of the new California Air Resources Board regulation "Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities" the VCAPCD will seek your guidance to establish "streamlined" permit conditions that include both of the regulations as they are similar and overlapping. This set of streamlined permit conditions will also include VCAPCD Rule 71.1, "Crude Oil Production and Separation", and Rule 74.10, "Components at Crude Oil and Natural Gas Production and Processing Facilities", as these rules also include vapor recovery requirements and leak detection and repair requirements.

Finding / Recommendation 3.2 Regarding "Routine Surveillance" for Compliance Monitoring

The VCAPCD acknowledges this recommendation and will begin work to improve the enforceability of permit attachments that use the term "routine surveillance". The VCAPCD will revise, define, or eliminate the use of this term as necessary.

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Please note however that we do not agree with your finding that "many" permit attachments use the term "routine surveillance" for compliance monitoring. Only a "few" or "several" permit attachments use the term "routine surveillance". As you noted, the attachments for Rule 50, Opacity", Rule 74.1, "Abrasive Blasting", Rule 74.2, "Architectural Coatings", and Rule 74.6, "Surface Cleaning and Degreasing", do use the term "routine surveillance" for compliance monitoring. However, the attachments do not rely on routine surveillance alone as the method of compliance monitoring as they also include recordkeeping as a form of compliance monitoring. For example, the Rule 74.2, Architectural Coatings", attachment requires "VOC records of the coatings used at the stationary source".

Finding/Recommendation 4.5 Regarding 30-Day Public Review and EPA 45-Day Review

VCAPCD conducts concurrent public and EPA review for Significant Permit Actions as required by VCAPCD rules. Rule 33.7.B.2 requires a minimum 30 day public notice for Significant Part 70 Permit Actions and Rule 33.7.C .3 requires EPA review of the proposed permit by no later than the publication date of the required public notice. Therefore, the VCAPCD Title V rules require concurrent EPA and public review.

VCAPCD's experience conducting concurrent public review and EPA review indicates that public comment is very rare. We do occasionally get comments from the permittee. Generally comments from the public are along the lines of "do not issue this permit" and not germane to specific permit conditions.

Going forward, the VCAPCD will continue to conduct concurrent public and EPA review as required by VCAPCD rules. Rather than determining if public comments are insignificant or significant, the VCAPCD will commit to conducting a second EPA 45-day review period as required by Rule 33.7.C.3 if any public comments are received. If this approach proves to be unsustainable, the VCAPCD will work with EPA to design an alternative procedure to make sure that EPA is aware of all public comments on proposed Significant Permit Actions.

If you have any questions, or wish to discuss this matter in further detail, please call me at 805/645-1440, or Kerby E. Zozula at 805/645-1421.

Sincerely,

MICHAEL VILLEGAS
Air Pollution Control Officer

c: Kerby E. Zozula, Engineering Division Manager
Dan Searcy, Compliance Division Manager

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Appendix G. EPA Response to VCAPCD Comments

EPA Region 9 Responses to VCAPCD Comments on the Draft Title V Program Evaluation Report August 25, 2017

Thank you for providing comments on the draft title V program evaluation report.[1] EPA has reviewed VCAPCD's comments and provides the following responses.

Finding 2.8 – Regarding 40 CFR Part 60, Subpart OOOO

District Comment: The VCAPCD acknowledges this recommendation and will begin work to improve the enforceability of Attachment 40 CFR 60 OOOO. To assist us in our efforts, we request that you provide us with examples of acceptable terms and conditions from other title V permits in California and/or other states that you may be aware of.
With the adoption of the new California Air Resources Board regulation "Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities" the VCAPCD will seek your guidance to establish "streamlined" permit conditions that include both of the regulations as they are similar and overlapping. This set of streamlined permit conditions will also include VCAPCD Rule 71.1, "Crude Oil Production and Separation", and Rule 74.10, "Components at Crude Oil and Natural Gas Production and Processing Facilities", as these rules also include vapor recovery requirements and leak detection and repair requirements.

EPA Response: Thank you for your comment. We look forward to working closely with VCAPCD staff in developing streamlined permit conditions.

Finding 3.2 – Regarding "Routine Surveillance" for Compliance Monitoring

District Comment: The VCPACD acknowledges this recommendation and will begin work to improve the enforceability of permit attachments that use the term "routine surveillance". The VCAPCD will revise, define, or eliminate the use of this term as necessary.

Please note however that we do not agree with your finding that "many" many permit attachments use the term "routine surveillance" for compliance monitoring. Only a "few" or "several" permit attachments use the term "routine surveillance". As you noted, the attachments for Rule 50, "Opacity", Rule 74.1, "Abrasive Blasting", Rule 74.2, "Architectural Coatings", and Rule 74.6, "Surface Cleaning and Degreasing", do use the term "routine surveillance" for compliance monitoring. However, the attachments do not rely on routine surveillance alone as the method of compliance monitoring as they also include recordkeeping as a form of compliance monitoring. For example, the Rule 74.2, "Architectural Coatings", attachment requires "VOC records of the coating used at the stationary source".

EPA Response: Thank you for your comment. We adjusted the wording used in the report. We also acknowledge that there are other methods of compliance monitoring such as recordkeeping; however, the recordkeeping period (hourly, daily, monthly, or rolling 12-months) is not always specified to improve the practical enforceability of the permit.

[1] The District's comments, along with EPA's responses to comments, are included as Appendix F and G, respectively, in the final report.

Finding 4.5 – Regarding 30-Day Public Review and EPA 45-Day Review

District Comment: VCPACD conducts concurrent public and EPA review for Significant Permit Actions as required by VCAPCD rules. Rule 33.7.B.2 requires a minimum 30 day public notice for Significant Part 70 Permit Actions and Rule 33.7.C.3 requires EPA review of the proposed permit by no later than the publication date of the required public notice. Therefore, the VCAPCD title V rules require concurrent EPA and public review.

VCAPCD's experience conducting concurrent public review and EPA review indicates that public comment is very rare. We do occasionally get comments from the permittee. Generally, comments from the public are along the lines of "do not issue this permit" and not germane to specific permit conditions.

Going forward, the VCAPCD will continue to conduct concurrent public and EPA review as required by VCAPCD rules. Rather than determining if public comments are insignificant or significant, the VCAPCD will commit to conducting a second EPA 45-day review period as required by Rule 33.7.C.3 if any public comments are received. If this approach proves to be unsustainable, the VCAPCD will work with EPA to design an alternative procedure to make sure that EPA is aware of all public comments on proposed Significant Permit Actions.

EPA Response: Thank you for your comment. To facilitate timely issuance of permits, EPA Region 9 will coordinate these review periods so that Region 9 can expedite its review when feasible.