South Coast Air Quality Management District

Title V Operating Permit Program Evaluation

Final Report

September 30, 2016

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 South Coast Air Quality Management District (SCAQMD), including the Office of Engineering and Compliance, Office of Finance, and Office of Legislative and Public Affairs. We appreciate their willingness to respond to information requests and share their experiences regarding the development and implementation of SCAQMD'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
AQMD	Air Quality Management 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
C.F.R.	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 C.F.R. Parts 61 & 63
NOV	Notice of Violation
NOx	Nitrogen Oxides
NSPS	New Source Performance Standards, 40 C.F.R. Part 60
NSR	New Source Review
OIG	EPA Office of Inspector General
PAATS	Permit Administration and Application 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
RECLAIM	Regional Clean Air Incentives Market
SCAQMD	South Coast Air Quality Management District
SIP	State Implementation Plan
SO_2	Sulfur Dioxide
SOB	Statement of Basis

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, 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 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 EPA completes evaluation of those programs.

Region 9 recently conducted a title V program evaluation of the South Coast Air Quality Management District (SCAQMD), whose permitting jurisdiction includes sources located in San Bernardino, Riverside, Orange, and Los Angeles Counties. Our evaluation of SCAQMD is the eleventh title V program evaluation Region 9 has conducted. The first ten 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: Elizabeth Adams, Acting Air Division Director, Air Division; Gerardo Rios, Chief of the Air Permits Office; Ken Israels, Program Evaluation Advisor; Eugene Chen, Program Evaluation Coordinator; and Lisa Beckham, Lornette Harvey, Sheila Tsai, and La Weeda Ward, Air Permits Office Program Evaluation team members

The evaluation was conducted in four stages. At the first stage, EPA sent SCAQMD a questionnaire focusing on title V program implementation in preparation for the site visit at SCAQMD's offices (See Appendix B, Title V Questionnaire and SCAQMD Responses). During the second stage of the program evaluation, Region 9 conducted an internal review of EPA's own set of SCAQMD title V permit files. The third stage of the program evaluation was a site visit, which consisted of Region 9 representatives visiting SCAQMD offices, located in Diamond Bar, CA, to interview District staff and managers. The site visit took place March 22-26, 2016. 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 SCAQMD, we conclude that SCAQMD implements a sophisticated program, with very experienced staff and management. We have, however, identified certain areas for improvement. Major findings from our report are listed below:

1. SCAQMD uses two different systems to prepare title V permits. One system is used for facilities subject to the Regional Clean Air Incentives Market (RECLAIM), while the other is for non-RECLAIM facilities. With both systems in place, the District has managed to implement a complete title V program for all its title V sources. (Finding 2.4)

2. Although SCAQMD previously had a significant title V permit backlog, the District now issues most initial and renewal permits in a timely manner. (Finding 5.1)

3. SCAQMD successfully implements the Compliance Assurance Monitoring (CAM) rule. (Finding 3.1)

4. SCAQMD's statements of basis do not consistently describe regulatory and policy issues or document decisions the District has made in the permitting process. (Finding 2.6)

5. Due to SCAQMD's practice of incorporating federal regulations using only a general reference, District permits may lack the detailed monitoring, recordkeeping, and reporting for specific applicable requirements that are adequate to ensure and determine compliance for the permittee, SCAQMD, and the public. (Finding 3.2)

6. SCAQMD provides public notices and other meaningful information of its draft and final title V permitting actions on its website. However, aside from those permits up for public review, SCAQMD does not otherwise provide the public with online access to the current final version of all title V permits. (Finding 4.1)

7. When public comments are received, certain practices by SCAQMD do not always ensure that the EPA and the public have sufficient time and information to determine whether an objection to a title V permit is warranted. (Finding 4.5)

8. Southern California contains a significant number of linguistically isolated communities for which SCAQMD consistently provides translation services. (Finding 4.4)

9. SCAQMD tracks title V program expenses and revenue. However, additional funds have been needed for the past three years to ensure that program expenses are adequately covered. (Finding 7.2)

10. SCAQMD Engineering staff routinely interact with Compliance staff (Finding 6.3)

11. 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. (Finding 8.1)

12. The title V permit format consolidates SCAQMD's emission unit-specific local permits into a single document. (Finding 8.3)

Our report provides a series of findings and areas of improvement that should be addressed by SCAQMD. We gave SCAQMD an opportunity to review these findings and areas of improvement on August 11, 2016, when we emailed an electronic copy of the draft report to SCAQMD for their comments.

EPA received SCAQMD's response, which included comments on the draft report, on September 12, 2016 (See Appendix F). Based on the comments received from SCAQMD, EPA revised the discussion and recommendation for one finding in the final report. Finding 7.2, which discusses the funding method used by SCAQMD for the title V permits program, was modified in the final report.

SCAQMD should prepare and submit a workplan that outlines how it intends to address our findings within **ninety (90) days** of receipt of this report. EPA responses to SCAQMD comments are included in this report (See Appendix G).

We note that on June 24, 2016, SCAQMD announced an executive management reorganization. EPA believes that the findings of this report are equally valid for the prior organizational team, as well as for the current organization for use in continued implementation of its title V permitting program.

1. Introduction

Background

In 2000, the U.S. EPA's Office of Inspector General (OIG) initiated an evaluation on the progress that 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 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 EPA to improve title V programs and increase the issuance of title V permits. In response to OIG's recommendations, 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 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. EPA's effort to perform title V program evaluations for each air pollution control agency began in fiscal year 2003.

On October 20, 2014, 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 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

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[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 .

evaluation of a permitting authority with 20 or more title V sources every year. This approach would cover about 85% of the title V sources in Region 9 once 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 SCAQMD, 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 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 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 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 EPA, CARB, and the California Air Pollution Control Officers' Association (CAPCOA), with SCAQMD participation, in 1999 to provide periodic monitoring recommendations for generally applicable SIP emission limits. Also in 1999, EPA and CAPCOA reached agreement on several title V permit processing issues, including required Statement of Basis (SOB) elements.

Concurrently with the above title V permitting program developments, SCAQMD adopted the Regional Clean Air Incentives Market (RECLAIM) program in October 1993. RECLAIM set an emissions cap and declining balance for many of the largest facilities emitting nitrogen oxides (NOx) and sulfur oxides (SOx) in the South Coast Air Basin. RECLAIM includes over 350 participants in its NOx market and about 40 participants in its SOx market. RECLAIM is an emissions cap and trade (CAT) program that allows participating facilities to trade air pollution while meeting clean air goals. As a result, SCAQMD's title V program was designed to accommodate RECLAIM's facility wide emissions cap and allowance trading.

Chapters 2 through 8 of this report contain EPA's findings regarding implementation of the title V permit program by SCAQMD. EPA believes that the history of collaborative efforts among EPA, CAPCOA, and CARB described above has resulted in clearer and more enforceable federal title V permits in California. 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 South Coast Air Quality Management District

EPA Region 9's evaluation of SCAQMD's title V program is the eleventh such evaluation conducted by Region 9. The first ten evaluations were conducted at permitting authorities in Arizona, Nevada, California, and Hawaii. The SCAQMD program evaluation team includes: Elizabeth Adams, Acting Air Division Director; Gerardo Rios, Chief, Air Permits Office; Ken Israels, Program Evaluation Advisor;

Eugene Chen, Program Evaluation Coordinator; and Lisa Beckham, Lornette Harvey, Sheila Tsai, and La Weeda Ward, Air Permits Office Program Evaluation team members.

The objectives of the evaluation were to assess how SCAQMD implements its title V permitting program, evaluate the overall effectiveness of SCAQMD's title V program, identify areas of SCAQMD's title V program that need improvement, identify areas where EPA's oversight role can be improved, and highlight the unique and innovative aspects of SCAQMD's program that may be beneficial to transfer to other permitting authorities. The evaluation was conducted in four stages. In the first stage, EPA sent SCAQMD a questionnaire focusing on title V program implementation in preparation for the site visit to the SCAQMD office. (See Appendix B, Title V Questionnaire and SCAQMD Responses.) The title V questionnaire was developed by 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 EPA's own set of SCAQMD title V permit files. SCAQMD 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 SCAQMD offices in Diamond Bar, CA to conduct further file reviews, interview SCAQMD 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 March 22-25, 2016.

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 SCAQMD.

SCAQMD Description

The SCAQMD was originally formed in 1977 by uniting the area's four county air pollution control agencies[3] to form the South Coast Air Quality Management District. The District's mission statement is:

> "The South Coast AQMD believes that all who live or work in this area have a right to breathe clean air. SCAQMD is committed to undertaking all necessary steps to protect public health

[3] Los Angeles County, Orange County, Riverside County, and San Bernardino County were the county agencies that were unified as the SCAQMD. Some of these county agencies were formed as early as early as 1947. See http://www.aqmd.gov/home/library/public-information/publications/50-years-of-progress#Birth%20of%20the%20First%20Unified%20Air%20Pollution%20Agency for details.

from air pollution, with sensitivity to the impacts of its actions on the community and businesses. This is accomplished through a comprehensive program of planning, regulation, compliance assistance, enforcement, monitoring, technology advancement, and public education."[4]

SCAQMD is organized into eight offices (excluding the Executive Office and the Governing Board), each of which is the responsibility of a Deputy Executive Officer (DEO): Legal; Science and Technology Advancement; Engineering and Compliance; Planning, Rule Development and Area Sources; Legislative and Public Affairs; Finance; Information Management; and Administrative and Human Resources. Stationary source operating permits, including title V permits, are issued by the Engineering group within Engineering and Compliance. Compliance and enforcement activities, such as facility inspections and source testing, and preparing enforcement cases are handled by the Compliance group within Engineering and Compliance. The Engineering and Compliance groups are separately supervised by different Assistant DEOs.

Broadly speaking, the primary organizational units within the Engineering group are the Engineering teams. An Engineering team is managed by a Senior Engineering Manager, with work duties for each of the teams largely divided by source category (e.g., one team will be responsible for all of the permitting work for energy/public services/terminals, while another will be responsible for coating/printing/plating operations). Each Senior Engineering Manager is responsible for 2 to 3 Air Quality Analysis and Compliance Supervisors (AQACS), each of whom is in turn responsible for 1 to 3 Senior Air Quality Engineers, who in turn are each responsible for 5 to 7 Air Quality Engineers. A single Engineering team consists of 30 to 40 personnel, including administrative staff, when fully staffed. At the time of our program evaluation, the Engineering group had five Engineering teams.[5]

The SCAQMD Title V Program

EPA granted SCAQMD title V program interim approval, which became effective on August 29, 1996,[6] and full approval, which became effective on November 30, 2001.[7] EPA also approved a program revision that became effective on January 1, 2004.[8]

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 action on an application for a minor modification must be taken within 90 days after

[4] From Mission Statement posted on SCAQMD website.

[5] We note that one of the engineering teams (refining) also has compliance responsibilities, and consists partially of inspectors.

[6] 61 FR 45330, August 29, 1996 (Direct Final Rule)

[7] 66 FR 63503, December 7, 2001.

[8] 68 FR 65627, November 21, 2003.

receipt of a complete permit application.[9] SCAQMD's local rules contain the same timeframes for title V permit issuance.[10]

When SCAQMD's title V program was first approved, the District estimated that there were approximately 800 sources that would be subject to title V permitting. Currently, there are approximately 385 sources. The District generally has sufficient permitting resources, and processes title V permit applications in a timely manner.

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. However, this report does not include a section on General Permits, which is covered in the questionnaire, because SCAQMD does not issue General Permits as part of its title V program.

The findings and recommendations in this report are based on EPA's internal file reviews performed prior to the site visit to SCAQMD, the District's responses to the title V Questionnaire, interviews and file reviews conducted during the March 22-25, 2016 site visit, and follow-up phone calls made since the site visits.

[9] See 40 C.F.R. 70.7(a)(2) and 70.7(e)(2)(iv).
[10] See Regulation XXX, Rule 3003(i)

2. Permit Preparation and Content

The purpose of this section is to evaluate the permitting authority's procedure for preparing title V permits. The requirements of title V of the CAA are codified in 40 C.F.R. 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 C.F.R. 70.5, and it specifies the requirements that must be included in each title V permit under 40 C.F.R. 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:** SCAQMD has a quality assurance process for reviewing draft versions of permits before they become available for public and EPA review.

Discussion: SCAQMD staff and managers indicate that draft title V permits are thoroughly reviewed by the first two levels of supervisors (the Senior Engineer and Air Quality Analysis and Compliance Supervisor [AQACS]) in all instances. Senior Engineering Managers will also review all draft title V permits, although the scope of review may vary based upon factors such as the type of permit action and experience level of the permit writer. In certain instances, permit actions involving a particularly controversial or high profile source are reviewed by more senior levels of management, including the Deputy Executive Officer and/or the Executive Officer.

Engineering staff and managers indicated that while Compliance staff are not involved in permit review as a matter of procedure, they are consulted on a regular basis given their routine interaction with facilities during site inspections. Engineering staff also indicate that, while not done as a matter of procedure, it is not uncommon to share courtesy copies of draft permits with permittees prior to public notice so that they may provide comments and corrections.

Recommendation: SCAQMD should continue its quality assurance practices.

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

Discussion: SCAQMD has developed a Technical Guidance Document (TGD) that provides an explanation and description of certain fundamental aspects of the title V permitting process. First written in January 1998, the TGD was developed to assist both in-house and industry representatives. The TGD has been updated periodically, most recently in 2005, with further updates in process. In addition, SCAQMD has also developed more specific guidance on periodic monitoring requirements. In addition to these documents, staff indicated during interviews that they will also review recently issued permits and permit file documentation for guidance on handling more specific and detailed permitting issues.

Recommendation: SCAQMD should continue its efforts to periodically update the TGD, and should consider coordinating among the various Engineering teams to develop guidance on more specific issues as needed.

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

Discussion: SCAQMD implements the title V program through its Regulation XXX (containing Rules 3000 through 3008). District Rule 3000 – General, contains clear definitions for Administrative, Minor, De Minimis Significant, and Significant Title V revisions. All District staff interviewed cited Rule 3000 as the basis for classifying title V revisions and were able to correctly process the various permit changes. District Rule 3005 - Permit Revisions, describes the processes for making various permit revisions and ties back to the definitions listed in Rule 3000. EPA has found that the District Regulation XXX rules are consistent with federal title V definitions and requirements pursuant to 40 C.F.R. Part 70. The District rules and the staff's understanding of the criteria for classifying title V revisions allow for effective processing of title V permit changes.

Recommendation: SCAQMD should continue to ensure Engineering staff successfully implement and categorize title V permit actions.

2.4 **Finding:** SCAQMD uses two different systems to prepare title V permits (one for facilities participating in the Regional Clean Air Incentives Market [RECLAIM], and one for non-RECLAIM facilities). With both systems in place, the District has managed to implement a complete title V program for all its title V sources.

Discussion: The District uses two different permit processing systems to prepare title V permits. The *Facility Permit (FP)* system is used for title V facilities that are also RECLAIM sources. The FP system is a customized database that standardizes the look and presentation of permits. The tabular presentation typically lists the equipment units in the left column, followed by columns of control equipment connected (if any), specific emissions limits, and a far right column containing a lists of Condition Identifiers (unique alpha-numeric codes used to identify permit conditions). Descriptions of Condition Identifiers are typically listed near the end of the permit.

The FP system allows an upfront visual glance of the various requirements in a tabular fashion. The FP system also eliminates the need to repeat overlapping conditions and boiler plate regulatory requirements for multiple pieces of equipment, and allows for regulatory consistency among similar permit types. This aspect is particularly useful in writing permits for large RECLAIM sources that can have hundreds of equipment units. On the other hand, readers can potentially find this challenging because they have to continually refer to the Condition Identifier description list to fully understand the requirements. Because FP is basically a database system, permit writers must pick from a list of standard conditions or request

database manipulation to add new unique parent conditions. During interviews, permit writers described varying levels of frustration regarding their ability to create new unique permit conditions when needed. Permit writers expressed additional frustration after expending considerable time searching the list of standard conditions without finding a condition that meets their needs. Permit writers must then follow a detailed procedure to add a new unique permit condition. This procedure, while difficult, can also be viewed as a thorough quality assurance process that assures only good permit conditions are added to the permit and to the permit FP systems database.

The *Alternative Permit (AP)* system is used for non-RECLAIM title V facilities. This system employs a Microsoft Word-based template in which the permit conditions are listed in paragraph form after each equipment unit. Permits developed through the AP system are generally easy to comprehend by readers as specific conditions and limits are listed directly after the description of the corresponding equipment unit. In addition, the permit writer is able to add unique and specific conditions without manipulating a database. Using the AP system, however, requires an extra level of quality control to ensure that incorrect or inapplicable conditions are not inadvertently included in the permit. In addition, use of the AP system results in fairly long permits, when compared to the FP system permits, even for facilities with less than a dozen pieces of equipment, as overlapping conditions and requirements are repeated for each equipment unit.

Both the FP and AP systems are successfully used by the District to develop title V permits for RECLAIM and non-RECLAIM facilities.

Recommendation: Depending upon available time and resources, the SCAQMD should consider modernizing FP. Such a modernization effort could represent an opportunity to update the library of permit conditions available in FP, as well as potentially incorporating aspects of the expanded permit format flexibility afforded by the AP system. Given the benefits provided by both FP and AP, SCAQMD should support the ability of the staff and managers in Engineering to leverage these benefits in the manner best suited to the specific permitting needs of the source or industry in question.

2.5 **Finding:** SCAQMD engages in streamlining[11] of overlapping applicable requirements in title V permits. However, the District does not consistently identify or document its streamlining decisions, making it difficult to determine if the final permit conditions assure compliance with the most stringent requirements.

[11] We note that streamlining overlapping applicable requirements should not be confused with streamlining procedural steps for permit issuance, as discussed in Finding 5.2.

Discussion: Streamlining is the process of evaluating multiple overlapping requirements applicable to an emission unit(s) in order to develop a single set of requirements to be placed in the title V permit that will assure compliance with all of the overlapping requirements.[12] When the title V program emerged in the mid-1990s, streamlining was particularly relevant in California, which had an established air permitting program with many existing requirements. As a result, emission units at a stationary source may be subject to several parallel sets of federal, state, and local requirements. This can result in a source being subject to multiple emission limits for the same pollutant, as well as multiple sets of source monitoring, reporting, and recordkeeping requirements. While all the requirements are legally binding, some of these requirements are frequently redundant as a practical matter, depending upon which combination of requirements is most stringent or most frequent. The streamlining process is intended to identify the most stringent set of requirements and establish them as permit conditions in the title V permit. While this process is optional, and can be initiated by either the applicant or the permitting agency, the applicant must agree to its use.

In our file review, we note that the District often streamlines multiple applicable requirements into a single set of permit conditions. For example, internal combustion engines are subject to many rules, with multiple potentially applicable federal requirements (such as NSPS subpart IIII, subpart JJJJ and MACT subpart ZZZZ) and District rules (such as Rule 1470 and Rule 1110-2). The District often streamlines the applicable requirements from these federal and District rules into a single set of permit conditions in which a single permit condition will assure compliance with multiple rules.[13] However, the District does not typically identify these instances, or more importantly, explain its reasoning in determining how the listed permit conditions represent the most stringent of the applicable emission standards and monitoring, reporting, and recordkeeping requirements.

Recommendation: SCAQMD should continue to streamline overlapping permit conditions, but should also include more information in the permit record identifying and explaining its streamlining rationale.

2.6 **Finding:** SCAQMD's statements of basis do not consistently describe regulatory and policy issues or document decisions the District has made in the permitting process.

[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

[13] See VA Medical Center West LA (014966), Owens Corning Roofing and Asphalt (035302), AES Huntington Beach (115389)

Discussion: 40 C.F.R. 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 C.F.R. 70.7(a)(5)).[14] The purpose of this requirement is to provide the public and 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.

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 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 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 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 EPA guidance to date on the elements required for statements of basis.

For initial and renewal title V permits, the District produces what it calls a "Statement of Basis." For all other permitting actions (minor revisions, significant revisions, and de minimis significant revisions), the District produces an "Engineering Evaluation." For the purposes of our evaluation, we considered the Engineering Evaluations and Statements of Basis prepared by SCAQMD to be the "statement that sets forth the legal and factual basis" of the title V permit required by 40 C.F.R 70.7(a)(5), referred to by EPA as a "Statement of Basis." That is, we reviewed both types of documents to determine whether they are consistent with EPA guidance on meeting the requirements of 40 C.F.R 70.7(a)(5).

[14] The requirement to develop a statement of basis could not be found in SCAQMD's title V rules (Regulation XXX – Title V Permits, Rules 3000-3008). We recommend SCAQMD update its rules to include this fundamental requirement of the title V program.

Many of the statements of basis we reviewed did not provide the level of detail and information specified by EPA guidance. Below we discuss our findings.

Initial and Renewal Title V Permits

EPA reviewed many SCAQMD statements of basis for initial and renewal title V permits and found that they often do not adequately describe regulatory and policy issues or document decisions the District made in the permitting process. SCAQMD's Statements of Basis typically contain ten sections: Introduction and Scope of Permit, Facility Description, Construction and Permitting History, Regulatory Applicability Determinations, Monitoring and Operational Requirements, Permit Features, Summary of Emissions and Health Risks, Compliance History, Compliance Certification, and Comments. These categories cover the types of information EPA generally expects to find in statements of basis for title V permits. However, the District does not consistently include the type of detailed, site-specific information needed in these sections.

It appears that the District considers statements of basis for initial and renewal permits to be a different evaluation than, for example, the Engineering Evaluation produced for other actions. The Statement of Basis for initial and renewal title V permits appear to be considered an administrative, non-essential document, based upon the lack of detailed information provided in many of the District's Statements of Basis for initial and renewal permits. In many cases, the District's statements of basis provide only generic, conclusory statements that do not contribute to a meaningful understanding of the source, its applicable requirements, or the draft permit conditions.

For example, under the section "Regulatory Applicability Determinations," the Statement of Basis for Redondo Beach LLC (Facility ID: 115536) states:

> "Applicable legal requirements for which this facility is required to comply are required to be identified in the Title V permit (for example, Section D, E, and H of the proposed Title V permit). Applicability determinations (i.e., determinations made by the District with respect to what legal requirements apply to a specific piece of equipment, process, or operation) can be found in **the Engineering Evaluations**. This facility is not subject to NSPS requirements in 40 C.F.R. 60 and NESHAPS requirements of 40 C.F.R. 63." (emphasis added)

This approach provides little useful information, and is written as though the reader is aware of, and has access to, all "the Engineering Evaluations." even though the particular evaluations are not specified Further, this section references only NSPS and NESHAP requirements, and does not mention other federally applicable requirements. The District's Statement of Basis should identify all applicable requirements and applicability determinations for the facility.

We found similar problems in the Statements of Basis for: Sunshine Canyon Landfill (Facility ID: 49111); 3M Company (Facility ID: 035188); Owens Corning, Roofing, and Asphalt (Facility ID: 35302); Fleishmann's Vinegar Company (Facility ID: 134590); Lithographix, Inc. (Facility ID:

139799); California Portland Cement (Facility ID: 800181), and Berry Petroleum Company. In instances where an NSPS or NESHAP *did* apply, the District identified the applicable NSPS and/or NESHAP and then stated that the "requirements are reflected in the Title V permit." This information is often inadequate because it does not sufficiently describe the applicability of specific portions of the regulation to the facility based on its operations or which compliance options the source has selected.[15]

The District also uses generic statements in the Monitoring and Operational Requirements and the Construction and Permitting History sections – again often referring readers generically to the "Engineering Evaluations" or referencing the guidelines the District uses to develop periodic monitoring conditions. A Statement of Basis needs to provide specific information about the monitoring and operational requirements of the facility. Based on our site visit interviews and review of permit conditions we found that the District consistently addresses the need for periodic monitoring in title V permits – but the decisions for the actual monitoring added to the permit is not documented and discussed in the Statement of Basis. This information should be included in the Statement of Basis.

We found the information in the Facility Description, Compliance History, and Emissions Information sections to contain helpful information regarding the particular facility. The District sometimes includes information related to CAM requirements, but the level of detail varies. In some instances, CAM applicability is not discussed at all (e.g., the Statement of Basis for Owens Corning Roofing and Asphalt LLC (Facility ID: 35302). The District should consistently discuss CAM and the applicable CAM requirements in statements of basis. Further, we note that review of the District's permitting files indicates that the District often documents changes and determinations made during the renewal process (see Application Processing and Calculations document), but does not include these decisions in the Statement of Basis. This is the type of information that should be included in a Statement of Basis.

In some instances, we found the District's statements of basis to include such site-specific information and details. However, this mostly appears to be the case for permits for which EPA has provided comments, such as refinery permits.

Significant, De Minimis Significant, and Minor Permit Revisions

The Engineering Evaluations the District develops for title V permit revisions contain substantially more information regarding a particular source than the District's Statement of Basis for initial and renewal title V permits. We found recent examples where the District included specific detailed analyses of federal regulations and we encourage the District to

[15] Per email from Lornette Harvey, EPA Region 9 dated November 13, 2015 to Danny Luong, SCAQMD regarding Chevron's proposed title V permit renewal. The proposed permit or statement of basis did not document the particular requirements applicable under a NESHAP, which resulted in EPA submitting comments for an incorrectly assumed set of applicable requirements. Such comments would be avoided if more detailed documentation were included regarding the applicable requirements for the source.

continue to make this a consistent practice. See, for example, recent significant revisions for Disneyland Resort (March 2016 proposal) and the University of Southern California – Health Sciences (October 2015 proposal). In general, the District's Engineering Evaluations should contain the same types of information required for statements of basis for initial and renewal title V permits, but be limited to the scope of the specific action.

Recommendation: SCAQMD must produce adequate statements of basis/Engineering Evaluations for all title V permitting actions (initial permits, renewals, and revisions), and should commit to improving the scope and content of these documents, particularly for initial and renewal permits, in accordance with EPA guidance in future permitting actions. We encourage SCAQMD to work in close coordination with EPA to assure such documents meet federal requirements.

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 C.F.R. 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 has to 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 C.F.R. 70.5(d).

Title V permits must also include Compliance Assurance Monitoring (CAM) provisions where CAM is required. In addition to periodic monitoring, permitting authorities are required to evaluate the applicability of CAM and include a CAM plan as appropriate. CAM applicability determinations are required either at permit renewal, or upon the submittal of an application for a significant title V permit revision. CAM requires 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:** SCAQMD successfully implements the CAM rule.

Discussion: The CAM regulations, codified in 40 C.F.R. 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. In interviews conducted during our site visit, it was clear that permit writers and managers understand the purpose of the CAM rule. Interviewees consistently displayed knowledge of CAM applicability and permit content requirements. CAM applicability for all pollutants and

every emission unit is addressed in SCAQMD's Statement of Basis, engineering evaluation, and the permit application evaluation and calculations form.[16] The District generally explains applicability correctly and adds appropriate monitoring conditions to title V permits for sources with PSEUs subject to CAM.

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

3.2 **Finding:** Due to SCAQMD's practice of incorporating federal regulations using only a general reference, District permits may lack the detailed monitoring, recordkeeping, and reporting for specific applicable requirements that are adequate to ensure and determine compliance for the permittee, SCAQMD, and the public.

Discussion: Congress established title V of the CAA so that each major source would have a single document that would ensure compliance with all CAA requirements applicable to the facility. To do this effectively, permitting authorities must incorporate applicable requirements into title V permits in sufficient detail so 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 upon our file review, the District appears to incorporate applicable requirements from the District's SIP-approved rules with the appropriate level of detail. However, the District incorporates requirements from federal regulations in an inconsistent manner which can result in enforceability issues. We have identified two specific issues regarding the District's incorporation of federal requirements: 1) high level incorporation by reference, and 2) incomplete or selective inclusion of requirements.

High level incorporation by reference

In multiple instances, SCAQMD incorporates requirements from federal regulations by referencing them at such a high level that the permit does not specify what limits apply or how compliance is determined.

For example, the renewal permit for the U.S. Government VA Medical Center – West LA simply states that 40 C.F.R. Part 63, subpart CCCCCC (National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities) applies. There are no permit conditions, however, defining what limits or practices apply or how the facility will demonstrate

[16] For example, Tesoro Sulfur Recovery Plant #151798 contains a great detailed CAM analysis even when CAM is not applicable. Applicability determination for initial, renewal, and significant permit revision for Phillips 66 Company #171107 is also very thorough.

compliance. Therefore, compliance with the permit conditions does not assure compliance with all applicable requirements. It is possible that SCAQMD intended to streamline Subpart CCCCCC requirements into other more stringent requirements; however, the lack of a detailed explanation in the Statement of Basis means that the District's rationale for omitting applicable requirements is unclear. The Statement of Basis notes that the District's requirements are more stringent and fuel throughput for the facility is low. This potentially means that monthly fuel throughput is less than 10,000 gallons of gasoline and only the District's requirements are applicable to the source; however, the permit and statement of basis do not provide further details or information on this issue. In addition, the Statement of Basis for this permit indicates that the requirements of 40 C.F.R. part 60, Subpar Dc (Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units) were included in the permit. However, no such requirements could be found, other than a reference to Subpart Dc being federally enforceable in Section K of the permit. Again, it is possible that SCAQMD intended to streamline Subpart Dc requirements into more stringent requirements; however, the lack of an explanation in the Statement of Basis means the District's rationale for omitting applicable requirements is unclear.

In another example, the renewal permit for the 3M Company includes an emission limit applicable under 40 C.F.R. 63 subpart JJJJ, but includes the compliance demonstration requirements at such a high level, such as monitoring ("comply with all applicable monitoring requirements pursuant to Section 63.3350"), that it is still unclear how this source demonstrates compliance with the applicable requirement. There are numerous potential monitoring requirements under Subpart JJJJ that may or may not be applicable to this source depending on the chosen compliance demonstration method. Merely stating that the source must "comply with all applicable monitoring" instead of specifying the applicable monitoring requirements makes the permit difficult to enforce because the actual applicable monitoring requirement has not been determined by the permitting authority. This type of high level incorporation creates ambiguity that can make it challenging to conduct a comprehensive compliance inspection.

Incomplete, selective inclusion

In other instances, SCAQMD does incorporate federal requirements in greater detail than a high level reference. However, many of these instances include only one element of the federal requirement, such as the emission limit, and do not include or discuss other elements of the federal requirement.

The permit for Owens Corning Roofing and Asphalt, for example, includes the applicable opacity and particulate emission limits for each emission unit subject to 40 C.F.R. Part 60, subpart UU (Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture). SCAQMD does not, however, incorporate the compliance demonstration methods from the NSPS (i.e. testing, monitoring, recordkeeping, and reporting requirements) into the permit. As a result, it

is unclear whether this permit assures compliance with the applicable requirements in Subpart UU.

Recommendation: SCAQMD must incorporate, in sufficient detail to be practically enforceable, all federally applicable requirements into its title V permits. We recommend the District use Region 9's Permit Review Guidelines and EPA Region 3's Permit Writers' Tips[17] when revising existing permits and when developing new title V permits. The section called "Incorporating Applicable Requirements" in the Region 3 document, which contains tips on how to translate NSPS and NESHAP standards into title V permit conditions, is especially useful.

[17] https://web.archive.org/web/20150914220459/http://www.epa.gov/reg3artd/permitting/title_v_tips.htm.

4. Public Participation and Affected State Review

This section examines SCAQMD procedures used to meet public participation requirements for title V permit issuance. The federal title V public participation requirements are found in 40 C.F.R. 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 C.F.R. 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 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 C.F.R. 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 EPA does not object to the permit in writing as provided under 40 C.F.R. 70.8(c). Public petitions to object to a title V permit must be submitted to EPA within 60 days after the expiration of the EPA 45-day review period. Any petition submitted to 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:** SCAQMD provides public notices and other meaningful information of its draft and final title V permitting actions on its website. However, aside from those permits up for public review, SCAQMD does not otherwise provide the public with 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[18] provides a number of useful links to provide information to the public and regulated community regarding the SCAQMD permitting program. From the District permitting website above, the public can find out information regarding the permitting process, whether or not a permit is needed for an operation, how to obtain a permit, application forms, permit application status, District permitting guidelines and policies and information about related programs that inform the District's permitting program.

Using the website link "Application Tracking on the WEB", the public is directed to a searchable database, known as Facility Information Detail (or "FIND" database),[19] that provides information on the status of permitted facilities' application, key information such as the facility name and address, facility identification number, facility application number, notice of violation/notice to comply number, or hearing board case number. In addition, the FIND program provides a powerful mapping tool to locate and identify permitted facilities by geographic location. Once a particular permitted facility's information is retrieved, the public has access to facility details such as whether or not permitting fees are due, equipment lists, compliance status, emissions associated with the facility, any hearing board proceedings, and whether there is a transportation plan associated with the facility.

Using the website link,[20] the public can search for title V permits that are available for public comment by date range, company identification number, company name, city, zip code, county, and whether or not the facility is a RECLAIM and/or a title V facility. Once a facility is selected, the type of permitting action, the proposed permit publication date, the deadline for requesting a public hearing, and the deadline for submitting public comments are provided. By selecting the view documents link after searching for a facility or an area, a detailed public notice, Statement of Basis, permit summary, and the permit itself may be viewed.

However, the District's website does not provide regular online access to the final issued permit for all title V sources. While the District website does provide substantial permit-related information for all title V sources, the actual permit documents are not available. Our examination of the District website indicates that title V permit documents are only available for those permits out for public comment. An informal survey of the websites for air agencies across the country indicate that a significant number provide access to the current final permit of all of its title V sources.[21]

[18] http://www.aqmd.gov/home/permits.

[19] http://www.aqmd.gov/home/tools/public/find.

[20] http://www3.aqmd.gov/webappl/publicnotices2/.

[21] Examples of agencies providing access to final title V permits includes: Bay Area Air Quality Management District, Santa Barbara County Air Pollution Control District, Arizona Department of Environmental Quality, Clark County Department of Air Quality, Washington State Department of Ecology, Oregon Department of Environmental Quality, Idaho Department of Environmental Quality, Alaska Division of Air Quality, New York State Department of Environmental Conservation, Wyoming

Recommendation: We recommend that the District continue to provide information through the various approaches currently used. We also recommend that the District provide the public with continuous access (i.e., not just during public comment periods) to the final issued permit of all title V sources via its website.

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

Discussion: During our interviews and file reviews, we found that, with the exception of certain high profile facility permits, the District receives few public comments. We typically found that facilities provided comments on their permits. The fact that the public comments on high profile facilities (or facilities of concern) indicates that the District has engaged in a mix of public outreach strategies that highlights those facilities with which the public is most concerned.

SCAQMD uses both newspapers and internet tools (SCAQMD's website and email lists) effectively in making title V information available to the general public. SCAQMD's efforts result in a more informed public and, consequently, more meaningful comments during the public comment periods of title V permits.

Recommendation: SCAQMD should maintain its public involvement processes with respect to title V permitting.

4.3 **Finding:** SCAQMD's draft and final permit packages inform the public of the right to petition the EPA Administrator to object to a title V permit.

Discussion: 40 C.F.R. 70.8(d) and District Rule 3003(l) provide that any person may petition the EPA Administrator, within 60 days of the expiration of 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.[22]

The District's draft and final permit packages inform the public of the right to petition the EPA Administrator to object to a title V permit. However, the District's responses to public comments are not always available to EPA during our review period, as described in Finding 4.5 below. Because the public's 60-day window to submit petitions requesting EPA to object to a permit follows EPA's 45 day review of the permit, the public may not have the District's responses to comments when they are deciding whether to submit a petition to EPA.

Department of Environmental Quality, Colorado Department of Public Health & Environment, Michigan Department of Environmental Quality, Utah Department of Environmental Quality, New Mexico Air Quality Bureau, Kentucky Department for Environmental Protection, Georgia Air Protection Branch, Ohio Environmental Protection Agency, Mississippi Department of Environmental Quality, and Florida Department of Environmental Protection.

[22] 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.

Recommendation: SCAQMD should continue to inform the public of the right to petition the EPA Administrator to object to a title V permit.

4.4 **Finding:** Southern California contains a significant number of linguistically isolated communities for which SCAQMD consistently provides translation services.

Discussion: SCAQMD's jurisdiction includes sources located in San Bernardino, Riverside, Orange, and Los Angeles Counties. EPA prepared a map of linguistically isolated communities within SCAQMD's jurisdiction in which title V permits have been or may be issued (see Appendix D). Unlike prior EPA title V program evaluations, Region 9 notes that, in general, SCAQMD's jurisdiction is densely populated with indications that linguistically isolated populations may be present. SCAQMD provides translation services in those communities during the title V permitting process including intensive community engagement based on SCAQMD staff knowledge and experience.

Recommendation: SCAQMD should continue to actively engage communities based on their current processes.

4.5 **Finding:** When public comments are received, certain practices by SCAQMD do not always ensure that EPA and the public have sufficient time and information to determine whether an objection to a title V permit is warranted.

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 EPA for a 45-day period during which EPA may object to permit issuance.[23] EPA policy allows 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[24] out for public comment, and provide the proposed permit, and supporting documents, to EPA at some point after the close of the public comment period.[25] When occurring concurrently, a state or local agency will provide EPA with the draft permit, and supporting documents, when the public comment period begins, so that both periods start at the same time.

[23] District Rule 3003(j)

[24] 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.

[25] Per 40 CFR 70.2, "proposed permit" is the version of a permit that the permitting authority proposes to issue and forwards to 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.

SCAQMD's practice is for EPA's 45-day review period to run concurrently with the public's 30 day comment period, which allows EPA 15 days to review any public comments. Per District Rule 3003(k)(1), EPA may submit a written request to SCAQMD for a total of 90 days (i.e., an additional 45 days immediately following the initial 45-day period) to review the proposed permit.[26] In concept, these timeframes would provide sufficient time for the District to respond to comment and for EPA to review the District's responses. In practice, however, it is challenging for the District to respond to comments and provide the responses to EPA with sufficient time for review, particularly for permitting actions with significant public interest.

In addition, as described previously in Finding 4.3, the public has a 60 day period to petition the EPA Administrator to object to issuance of a title V permit. This 60 day period begins once the 45 day EPA review ends. In instances in which the District requires a significant amount of time to address public comments and/or make edits to the permit, both the EPA review period and the public's period to petition will often have expired before these documents are available. In these instances, neither the EPA nor the public have sufficient time or information to determine whether an objection to the permit is warranted. As such, the District's practice creates tension with the EPA's authority to object to issuance of title V permits under section 505(b)(1) of the CAA and with the public's right to petition the Administrator to object to issuance of the permit under section 505(b)(2) of the CAA.

Some permitting authorities run the EPA 45-day period concurrently with the 30-day public comment period as the default practice, but with the understanding that if public comments are received, EPA review will instead be sequential. In such instances, the permitting authority makes any revisions to the permit or permit record as necessary, and resubmits the proposed permit with other required supporting information to re-start the EPA review period.

Recommendation: We recommend that SCAQMD revise its practices such that for permit actions in which public comments are received, SCAQMD 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. To facilitate timely issuance of permits, EPA Region 9 and SCAQMD should coordinate these review periods so that Region 9 can expedite its review when feasible.

[26] Id.

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. 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 C.F.R. 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.[27]

5.1 **Finding:** Although the SCAQMD previously had a significant title V permit backlog, the District now issues most initial and renewal permits in a timely manner.

Discussion: At the start of SCAQMD's title V program, SCAQMD estimated it had over 800 title V sources. To resolve this issue, the District formed a Permit Streamlining Taskforce in 1998,[28] whose goal was to develop recommendations to expedite the District's permitting process, improve customer service for the businesses regulated by the District's permitting division, and make the District's permitting process more effective. [29]

By November 2003, as a result of implementing the Permit Streamlining Taskforce recommendations, a large amount of the required title V permits were issued. The District still occasionally exceeds the 18-month deadline for processing title V initial and renewal applications, however, compared to the number of active title V sources in their universe, the percentage of permits that exceeds the 18-month deadline for processing applications is relatively small.[30] A summary of title V permit workload from 2012 to present is included in the table below.

Table 1. Summary of title V permit backlog (2012-16)

	Dec-2012	Dec-2013	Dec-2014	Dec-2015	May-2016
Total title V applications (initial and renewal)	66	105	78	80	68
Title V Applications > 18 months	2	11	22	10	7

[27] See 40 C.F.R. 70.7(a)(2) and 70.7(e)(2)(iv).

[28] See SCAQMD Power Point Presentation; Mohsen Nazemi, Assistant Deputy Executive Officer; dated February 27, 2007.

[29] This discussion should not be confused with the earlier discussion of permit streamlining in Finding 2.5.

[30] At present, it is estimated that SCAQMD has approximately 385 title V sources.

Recommendation: The District should continue processing title V permits in a timely manner.

5.2 **Findings:** District Rule 3008 allows sources to voluntarily limit their potential to emit in order to avoid the requirement to obtain a title V permit. The District has since discontinued the use of Rule 3008 and now uses a list of guidelines to determine if a title V major source can be reclassified as a synthetic minor source.

Discussion: A source that would otherwise have the potential to emit (PTE) a given pollutant that exceeds 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 the requirement to obtain a major NSR or title V permit. 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.[31] According to the EPA guidance, in order 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 source subject to the limitations; 2) the time period for the limitation; and 3) the method to determine compliance, including appropriate monitoring, record keeping, and reporting. [32]

District Rule 3008 allowed major sources to voluntarily limit their PTE to below major source thresholds in order to avoid the requirement to obtain a title V permit. Title V sources were required to demonstrate that their PTE had been permanently reduced either through a facility modification or by accepting an enforceable permit condition to limit the PTE to levels less than the title V major source emission thresholds that are listed in District Rule 3001(b). In addition, a source's actual emission rate was required to be 50% or less of a major source threshold to qualify as a synthetic minor source (the District refers to these types of sources as title V conditionally exempt). The District has discontinued the use of Rule 3008 and developed a list of guidelines to accomplish this task. Although the District was not able to provide a written copy of the guidelines or specific development and implementation dates, it did describe the guidelines as follows:[33]

> 1) the source's actual emission rate is 80% or less than the major source threshold;
> 2) the source must demonstrate that their actual emission rate is 80% or less of the major source threshold for five years prior to submitting an application;

[31] *Guidance on Limiting Potential to Emit in New Source Review Permitting*, Memorandum from Terrell E. Hunt and John S. Seitz, June 13, 1989.

[32] *Options for Limiting the Potential to Emit of a Stationary Source under Section 112 and Title V of the Clean Air Act*, Memorandum from John S. Seitz and Robert I. Van Heuvelen, January 25, 1995.

[33] *SCAQMD Title V Program Evaluation Synthetic Minor Permitting Program*, Electronic Mail from Lornette Harvey to Amir Dejbakhsh, June 22, 2016.

3) the source's processes cannot be subject to any National Emission Standards for Hazardous Air Pollutants (NESHAP) or New Source Performance Standards (NSPS) regulations;
4) the source must submit a compliance plan that must be approved by the District; and
5) the source must submit administrative equipment permit applications for each piece of equipment that contributed to its PTE when classified as a major source.

At our request, SCAQMD provided us with 14 examples of permitted synthetic minor sources (example permits) for facilities that applied for emission limits to avoid being classified as a title V major source.[34] Our review indicates that the example permits meet EPA guidelines of being legally enforceable and enforceable as a practical matter. For example, each of the example permits contained requirements for the source to monitor their hours of operation, their material usage amount, and both their hazardous air pollutants (HAP) and criteria pollutants emission rate. The sources were required to track, record, and maintain records of these monitoring requirements on at least a monthly basis to demonstrate that they have not exceeded the major source threshold. 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.

Not all these permits are consistent with the District's new guidelines, however. For example, three of the permitted sources we reviewed (two coating operations, and a power plant) did not meet the District guideline of having an actual or PTE emission rate below the major source threshold at the time they submitted an application. Only four (less than 30%) of the permitted source's PTE met the guideline of having an emission rate that is 80% or less of a major source threshold for five years prior to submitting an application. In addition, four of the permitted sources were subject to either the NESHAP or NSPS regulations when they submitted their permit applications. We do not consider any of these items to affect the practical or legal enforceability of these permits. However, these types of findings suggest that the District may not be applying its own guidelines consistently throughout its jurisdiction.

In addition, we note that eight of the sources were issued several individual equipment permits that contain emission limits and requirements for tracking and recording emission data to demonstrate compliance. Since determining compliance status as a synthetic minor source is based on a facility-wide emission rate, we note that it may be less challenging for District and federal inspectors, and for the sources themselves, to determine compliance if these requirements were issued in a single permit instead of multiple individual equipment permits.

[34] Of the 14 example permits, four sources were coating operations, two were pre-fab home manufacturers, two were printing operations, and one each of this source category was included: a bulk chemical distribution marine terminal, a Wastewater Treatment Plant (WWTP), a small power plant, a bakery, a high-rise apartment building, and a boat trailer manufacturer.

Recommendation: The District should ensure that its new guidelines regarding limiting PTE are clearly and consistently applied throughout its jurisdiction. We recommend consolidating these new guidelines into a written policy. In addition, the District should consider issuing a single document that list requirements for a source to demonstrate compliance with facility-wide emission limits, instead of individual equipment based emission limits. Such an approach may be easier to enforce for compliance staff and easier to understand for a permitted synthetic minor source.

6. Compliance

This section addresses SCAQMD 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, 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:** SCAQMD performs full compliance evaluations of all title V sources on an annual basis.

Discussion: EPA's 2014 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.[35] 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 it is District practice to perform full compliance evaluations (which includes an on-site inspection) of all title V sources on an annual basis. Given the low major source thresholds for nonattainment pollutants in the SCAQMD jurisdiction, this means that the District currently inspects approximately 385 title V sources each year. The District utilizes multiple internal databases to track application and permit issuance dates, compliance report deadlines, and inspection due dates. These systems allow all District employees access to previous inspections reports and notify the inspectors of which sources are due for inspection based on the date of the previous inspection report.

Recommendation: The EPA commends SCAQMD for performing full compliance evaluations of all title V sources annually.

6.2 **Finding:** SCAQMD conducts unannounced inspections of title V sources as a matter of policy.

Discussion: During interviews, air quality inspectors reported that it is District policy to conduct unannounced inspections of title V sources. Inspectors confirmed that they do generally conduct unannounced inspections, although the District may announce inspections in advance when necessary to gain access to unmanned sites or when there are particular safety concerns.

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

The EPA concurs with this policy. Unannounced inspections allow inspectors to observe facilities and examine ongoing recordkeeping at times when operators are not expecting regulators to be present. This provides a more realistic view of the facility's compliance status than observations made during announced inspections.

Recommendation: SCAQMD should continue its practice of conducting unannounced inspections.

6.3 Finding: SCAQMD Engineering staff routinely interact with Compliance Staff

Discussion: As mentioned previously in Finding 2.1, SCAQMD Compliance staff are not involved in review of draft title V permits as a matter of standard procedure. However, during interviews, SCAQMD Engineering staff indicated that they routinely consult with Compliance staff during the permit development process to discuss outstanding or ongoing compliance issues, to review recent inspection details, or to discuss enforcement applicability. Similarly, Compliance staff indicated regular interactions with permitting staff occur and did not indicate any issues with reaching out to Engineering staff. In addition, Engineering staff indicated that they receive access to facility inspection reports via the District's internal database system.

Recommendation: EPA commends SCAQMD and recommends that it continue to encourage 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, 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 C.F.R. 70.9.

7.1 **Finding:** SCAQMD engineers and compliance staff report that they receive effective legal support from the District Counsel's office.

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

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

7.2 **Finding:** SCAQMD tracks title V program expenses and revenue. However, additional funds have been needed for the past three years to ensure that program expenses are adequately covered.

Discussion: CAA Section 503(b)(3)(i) and 40 C.F.R. part 70 require permit fees be sufficient to cover program costs and are used solely to cover the permit program costs. In addition, EPA has provided guidance on title V fees that provides general principles regarding the funding of title V permitting program.[36] During our evaluation, SCAQMD provided a clear accounting of its title V program costs showing that, from July 1, 2007 through June 30, 2012, SCAQMD on average

[36] See August 4, 1993 guidance entitled, "Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V" found in Appendix E of this report.

collected sufficient fee revenue to implement the title V permitting program.[37] However, SCAQMD's information also showed that from July 1, 2012 through June 30, 2015, the title V permitting program's fee revenue was less than the expenses necessary to implement the program. During this timeframe, the gap between title V fee revenue and title V program expenses widened so that for the fiscal year ending June 30, 2015, the program deficit was about $4 million, approximately, 66% of the permitting program costs. SCAQMD attributed the gap between title V revenue and expenses to increases in indirect costs such as retirement, healthcare, and the District's facilities.

According to SCAQMD, the differences between fee revenue and program expenses from July 1, 2012 through June 30, 2015 have been covered by the use of penalties from noncompliance at title V facilities.[38] EPA determined that between July 1, 2012 and June 30, 2015, roughly $9.7 million of title V penalties were used to fund the title V program's expenses. Reliance on variable, non-recurring funding sources such as title V penalties raises concerns of possible problematic shortfalls.

In response to EPA's Office of Inspector General report, "Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues" ("October 2014 IG Report"), EPA has committed to update its title V fee guidance during federal fiscal year 2017.[39]

Recommendation: First, EPA commends SCAQMD for its existing accounting practices that provide sufficient information regarding expenses and revenue associated with title V permits. Second, EPA strongly encourages SCAQMD to take measures, such as raising permit fees and reducing expenses, to minimize continued use of reserves including title V penalties to cover program funding deficits. EPA also strongly recommends that the SCAQMD evaluate its use of title V penalties as a funding source consistent with any guidelines provided by EPA in its upcoming revised title V fee guidance.

7.3 **Finding:** Engineering and compliance teams have unfilled vacancies at the staff and management levels.

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[37] See Appendix E for SCAQMD's narrative and table accounting of revenue and expenses for the timeframe 2007 to 2015. SCAQMD tracks title V revenue separately from other revenue collected by the District. EPA has not conducted an analysis to determine whether or not the title V revenue collected is above the presumptive minimum as defined in 40 C.F.R. Part 70.

[38] See April 13, 2016 email from Donna Peterson, SCAQMD to Ken Israels, EPA Region 9 and the August 30, 2016 spreadsheet found in Appendix E for additional details.

[39] 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 http://www.epa.gov/sites/production/files/2015-09/documents/20141020-15-p-0006.pdf.

Discussion: Many interviewees identified vacant positions that made the permit writing and review process inefficient. Permit writers cited the inability to identify which mid-level reviewer should review specific permits prior to upper level review, approval and issuance as a recurring issue with processing permits. Although EPA has not identified a permit issuance backlog (see Finding 5.1), EPA is concerned that, given that title V programmatic costs are being covered in an unsustainable fashion (see Finding 7.2), the unfilled vacancies identified above may be an indicator of a future problem that may arise if these vacant positions are not filled.

Recommendation: SCAQMD, as it considers addressing Finding 7.2 of this report, should consider filling some of the staff and management level vacancies in order to prevent a future title V permitting backlog.

7.4 **Finding:** The District has a training program for its permitting staff.

Discussion: During our field visit, SCAQMD provided us with a document entitled, "New Engineer Orientation & Training", which provides an outline for a course that covers how SCAQMD's permitting process and related processes (the hearing board, inspections, and the use of the District's computer systems, for example) work and indicates that practical training sessions that promote familiarity with the District's permitting program for new hires. The District's questionnaire response states that:

"Permitting staff attend CARB training courses on CAM and CEMS, which are exclusively held at SCAQMD. Some of the courses that SCAQMD Engineers, as well as Inspector have taken are listed below... CEMS and source test reports are reviewed by Source Testing engineers with extensive training and experience in source test methods and QA/QC procedures."

Experienced engineers are periodically offered training as well. This includes training classes offered by CARB, CAPCOA and USEPA. For example, recently, training was conducted on how to use the new modeling program AERSCREEN Policy guidance. Typically, memos or e-mails are developed when necessary to document rule interpretations/clarifications and distributed to all engineers. These are also posted on the District's intranet, as well as training opportunities offered. The District's training programs covers:

- developing periodic and/or sufficiency monitoring in permits,
- ensuring that permit terms and conditions are enforceable as a practical matter,
- writing a Statement of Basis,
- general permitting practices.

During the course of our interviews, District staff and management suggested that a refresher training and feedback by EPA staff based on their experiences in reviewing title V permits would be useful to ensure consistency and ensure all requirements are addressed.

In our evaluations of other title V permitting authorities, we have found that it is useful to develop specific curricula that define the training necessary to prepare an effective title V permit (see Appendix H of our Bay Area Air Quality Management District Program Evaluation Report for an example curriculum).

Recommendation: While the fundamental components of effective permitting are provided to District permit writers, the District should review its training program of permitting staff, identify needs, and coordinate with EPA and others to ensure that a comprehensive title V training program is implemented. We recommend that SCAQMD consider preparing a formal curriculum for training its engineers. EPA will provide regular feedback on permitting issues during the quarterly meetings described in Finding 7.8.

7.5 **Finding:** Most engineering staff are aware of environmental justice (EJ), but are not familiar with how the District's EJ principles affect their work.

Discussion: SCAQMD's EJ program is one of the earliest and most comprehensive programs in Region 9. SCAQMD's program encompasses various aspects of its air quality control and public health protection program, including, but not limited to, permitting. As an example, permitting engineers apply the SCAQMD's rigorous rules and regulations when assessing a permit application. For example, a permitted facility must be in compliance with the District's toxic rules (1401 et seq.) that set limits for maximum incremental cancer risk and, if located near a school, Rule 1401.1 provides additional health protection to children. Other source specific rules, such as Rule 1470 (Requirements for Stationary Diesel-Fueled Internal Combustion and Other Compression Ignition Engines), Rule 1148.1 (Oil and Gas Production Wells), and Rule 1148.2 (Notification and Reporting Requirements for Oil and Gas Wells and Chemical Suppliers), place specific restrictions and notification requirements on facilities nearby sensitive receptors.

Additionally, the SCAQMD engages in further EJ outreach and defines environmental justice as "equitable environmental policymaking and enforcement to protect the health of all residents, regardless of age, culture, ethnicity, gender, race, socioeconomic status, or geographic location, from the health effects of air pollution." The purpose of SCAQMD's EJ program is to ensure that everyone has the right to equal protection from air pollution and fair access to the decision-making process that works to improve the quality of air within their communities. To support its EJ efforts, the SCAQMD formed the Environmental Justice Advisory Group, which serves as an advisory group to the SCAQMD Governing Board, with a focus on air quality and environmental justice issues in the area served by SCAQMD.

SCAQMD has a Senior Public Information Specialist to specifically coordinate environmental justice efforts for the agency.

Engineering and Compliance Division management and selected permitting staff have also participated in the demonstration of EPA's EJScreen tool and CalEPA EnviroScreen. These tools

are used on a case-by case basis to determine EJ impact areas where the TV facilities are located prior to issuance of the public notice.

During our interviews of District staff, some of the permitting staff were unfamiliar with how the District's EJ program impacts permitting. This is not an indication that the EJ program's overarching principles has not had an effect on permitting, just that some among District staff were unable to identify the EJ program's effects on the permitting program.

Recommendation: SCAQMD should continue to implement its EJ program and increase internal awareness among its Engineering and Compliance staff.

7.6 **Finding:** District staff would like training on federal requirements (NSPS, NESHAPs) as they are updated or promulgated.

Discussion: During our site visit, District staff suggested that training on new federal regulations, especially when new Maximum Achievable Control Technology (MACT) or New Source Performance Standards (NSPS) standards are promulgated, would improve staff's familiarity with new regulatory requirements and help permit writers identify how best to incorporate these new requirements into title V permits. As new regulations are promulgated by EPA, new emission limits and control options become applicable to title V sources by specific compliance dates. These new regulations present implementation challenges for SCAQMD's title V program.

Recommendation: EPA will work with SCAQMD to ensure that as new federal standards are promulgated, the District is made aware of training opportunities.

7.7 **Finding:** The District would like more routine interaction with EPA on title V permitting issues.

Discussion: During our site visit, several interviewees suggested improving the communication between the District and EPA staff. Prior communication between the two agencies was conducted on an as-needed basis, mainly when a specific permitting issue for a title V source required both agencies involvement. However, in response to the District's request, the two agencies agreed to meet on a regular, quarterly basis. On June 2, 2016, the first quarterly meeting was held with both agencies contributing to a meeting agenda. The quarterly meeting gave the opportunity for both agencies to discuss upcoming air permitting issues; updates on federal and district rules and regulations; air permitting compliance and monitoring issues; and solutions for any current or pending air permitting issues and concerns.

Future quarterly meetings will continue to foster communication and working relationship between EPA and District staff. In addition, regular meetings should facilitate a proactive response to issues and concerns that are important to both agencies. The quarterly meetings

will also give both agencies an opportunity to express new ideas and concepts on the best methods to use to address air permitting issues.

Recommendation: EPA and the District should continue to have quarterly meetings to improve communications and coordination. The meetings will also help both agencies in developing proactive responses and solutions to title V air permitting problems, and providing updates on both federal and district rules and regulations.

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 title V, 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.

Recommendation: EPA has no recommendation for this finding.

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 SCAQMD's Rule 3008 resulted in actual emissions no greater than 50 percent of the title V major source threshold for any pollutant. As discussed in Finding 5.2, the District has discontinued the use of Rule 3008, and presently uses guidelines to establish a source's PTE below title V major source thresholds. Such facilities (referred to as title V conditionally exempt) are issued individual equipment permits that impose monitoring, recordkeeping, and reporting requirements on sources to assure compliance with PTE limits below title V major source thresholds.

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

8.3 **Finding:** The title V permit format consolidates SCAQMD's emission unit-specific local permits into a single document.

Discussion: During the interviews, many SCAQMD staff communicated that having all information in a standardized single permit allows for easier review of facility operations. Since title V permits must include all applicable requirements, District permitting staff now review federal regulations (e.g., NSPS, NESHAP) more frequently to determine which requirements apply to facilities. The permit application review process requires that permitting staff evaluate whether applicable requirements, including federal regulations, apply to emission units. This process involves 'tagging' of emission units to a rule (i.e., identifying all the rules applicable to each emission unit), which staff and managers indicated has increased awareness of rules by industry, and facilitates compliance.

Recommendation: EPA has no recommendation for this finding.

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 South Coast AQMD responses

EPA

Title V Program Evaluation

Questionnaire

Table of 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?**

SCAQMD has an integrated Title V Permit Program, where the Permits to Construct, as well as Permits to Operate are part of the Title V Permit for each facility. Since SCAQMD has already issued all of the initial Title V Permits for sources that were originally subject to Title V, there are only three other types of Title V applications that SCAQMD processes. Those include Title V Permit to Construct applications for brand new facilities, Title V Revisions Permit to Construct applications for modifications to existing Title V facilities and Title V Permit Renewal applications. For the first two type of Title V Permit to Construct applications, the SCAQMD staff and applicant are in constant communication as part of the processing of the Permit to Construct for a New or Revised Title V Permit, so updated information is obtained from the applicant prior to issuance of the Permit to Construct for a new or modified facility. For the Title V Permit Renewal applications, since SCAQMD has an integrated Title V Permit Program, the Title V Permit in certain cases will be revised to include new Permits to Construct in the Title V Permit, while the Renewal application is being processed. Therefore, when the Title V Permit is proposed for renewal, SCAQMD already includes all updates to the Title V Permit that may not have been included in the original Title V Renewal application. Also typically, the SCAQMD will send a Draft permit to the facility for review of factual information, such as equipment description, etc. If updates are necessary and the SCAQMD agrees, they are included in the final Draft permit prior to the release of the proposed permit to EPA and public for review and comments.

Y ☑ N ❑ **a. Do you require a new compliance certification?**

Each Title V source is required to submit a compliance certification form (http://www.aqmd.gov/docs/default-source/aqmd-forms/Permit/500-acc-form.pdf?sfvrsn=4) annually, even if the applicant has an application pending for a Title V Permit Revision or Renewal. Therefore, there is no gap in the submittal of compliance certifications while there is a pending Title V Permit application being processed by SCAQMD, even if there has been a significant amount of time between when the Title V application submittal and release of draft permit .

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

Title V facilities are the SCAQMD's major focus and are inspected at least annually, and in many cases multiple times a year. Compliance records are checked in the field and in our centralized database for any non-compliance status and to see if there have been any notices of violation issued. Engineering staff works closely

with Compliance staff and General Counsel's staff to determine whether or not any non-compliance has been remedied and facility is back into compliance before a new permit is proposed. Any deficiencies must be corrected before the permit is issued. The Statement of Basis also lists the Compliance History.

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.**

   It is the SCAQMD's policy to ensure that the facility is in compliance or on the road to compliance under an SCAQMD Hearing Board Abatement Order or a Variance or operating under an Alternate Operating Condition pursuant to SCAQMD's Rule 518.2 before issuing the TV permit. A Title V facility must submit Form 500-C2 (http://www.aqmd.gov/docs/default-source/aqmd-forms/Permit/500-c2-form.pdf?sfvrsn=2) to SCAQMD to provide a detailed description of non-compliant activities and how compliance was achieved following violations of permit conditions and/or rule requirements. A facility that continues to operate in violation of such requirements may obtain an Alternative Operating Condition in accordance with Rule 518.2. Form 500-C2 must also be completed and submitted to describe how compliance has been achieved with the conditions of any variance or order for abatement granted to a Title V facility by the SCAQMD Hearing Board.

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

   The SCAQMD, formed in 1977, is one of the oldest air pollution agencies and has been writing and processing permits for decades. Since South Coast Air Basin is designated as an Extreme Ozone Non-Attainment area, the threshold for major sources is a potential to emit 10 tons per year of VOCs or NOx. Therefore, in SCAQMD we have several hundred Title V facilities (more than most states), we have designed a centralized permit processing system called FPS (Facility Permit System) and Engineering staff has been trained to use the FPS. SCAQMD has an integrated permitting process for combining NSR and Title V requirements. FPS contains general permit conditions, equipment descriptions, basic and control equipment relationships, rule citations, alternative operating conditions, as well as basic information about the facility.

   Facilities that are not in our Regional Clean Air Incentives Market (RECLAIM) program which typically have a smaller number of devices with existing Command and Control permits go through an "alternative format" that leverages the permits in order to streamline and simplify the facility permit.

Policies and procedures have been placed in an intranet available to all permitting staff. Additionally, there is a bulletin board so engineers can ask questions and share tips.

Although the SCAQMD has a prolonged and extensive amount of experience with issuing effective permits, efforts at improving the process are ongoing. Feedback from permit holders is incorporated and shared division-wide to enhance efficiency and efficacy.

In 1998, the SCAQMD Governing Board adopted a Permit Streamlining Initiative and formed a Permit Streamlining Task Force (PSTF), with Task Force members including Governing Board members, industry representatives, local government representatives, environmental groups, consultants and SCAQMD staff. The objective of the PSTF was to streamline and improve efficiency of SCAQMD's permit program. The PSTF members discuss and brainstorm new ways to expedite permitting and improve customer service. Also, in 1998, a consultant was retained to confer with the permitting staff and the industry/public to determine the areas needing improvement. The PSTF developed and presented to the SCAQMD Governing Board dozens of recommendations in four different categories, which SCAQMD staff implemented, including measures to (a) reduce steps required to issue permits; (b) improve communications internally and externally; (c) optimize permit structure and systems; and (d) enhance management and organizational effectiveness.

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

All engineers are trained on the steps involved in processing TV permits and use templates for Statement of Basis, letters and public notices and we provide various application, certification, notification and other standard forms to the Title V sources to ensure consistency. All permits are reviewed by the first level supervisors, Senior Engineers; the second level supervisors, Air Quality Analysis and Compliance Supervisor (AQACS) and finally the Permitting Managers and in some special cases by the Deputy Executive Officer or his/her designee. The Initial TV permit is also reviewed and approved by the Deputy Executive Officer or his/her designee.

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

The SCAQMD developed a Technical Guidance Document (TGD) for Title V, dated back to January 1998, to assist in-house and industry representatives, consultants, etc. in describing and informing those affected by the Title V Program and for submittal of initial Title V permits. The SCAQMD has updated the TGD and issued a Draft Technical Guidance Document for the Title V Permit Program, in March 2005, Version 4.0, which is located on our website and can be found at http://www.aqmd.gov/docs/default-source/title-v/tgd/draft-tgd-

complete.pdf?sfvrsn=2 This document incorporates elements for modification of a Title V Permit, as well as other information about the SCAQMD's Title V Program. SCAQMD is currently in the process of further updating this document.

The Permit Streamlining Task Force (PSTF) proposed and the SCAQMD Governing Board approved recommendations to streamline the processing of Title V permits by also using an alternative Title V permitting format, a simplified version of a facility permit, for Non-RECLAIM Title V sources, which was successfully implemented. In 2001, SCAQMD Rule 3008 was adopted exempting low-emitting facilities by limiting the facility's potential to emit. This helped to tailor and reduce the number of facilities requiring Title V permits.

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

In the SCAQMD's TGD document described above, for initial Title V Permit, in Volume I, Appendix C – Application and Permit Streamlining explanation of what streamlining techniques and rationale are discussed. In general the topics cover the following:

Application Streamlining:

- Designation as a Title V Facility;
- Emission Data;
- Trivial Activities;
- Rule 219 – Exempt Equipment;
- Certification of Compliance; and
- Referencing Applicable Requirements.

Permit Streamlining:

- Reference to specific applicable requirements which are on record with SCAQMD;
- How SCAQMD will resolve conflicting permit requirements;
- Applicants request to streamline multiple redundant or overlapping requirements; and
- What criteria are applicable to streamlining of redundant or conflicting requirements.

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

In addition to the PSTF, the SCAQMD Governing Board has also formed a Home Rule Advisory Group (HRAG), for which both EPA and ARB are members of. One of the objectives of the HRAG was to identify overlapping regulations and to work with all stakeholders to avoid redundancies and streamline the requirements. However, the implementation of permit streamlining measures recommended through the PSTF or HRAG is not

intended to provide relief from any federal, state and/or local air quality rules and regulations, but to avoid any redundancies. SCAQMD actually lists all applicable federal, state, and local air quality regulation separately to ensure that no requirements are dropped or missed. In many cases, testing methods, time between testing intervals, etc. are different from federal, state and local agencies so each emission limit, testing method, etc. are listed in separate permit conditions to allow ease of review by the facility to know when each test regiment is required.

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

   Strengths:
   1. Uniformity and commonality in formatting allows easy reading by SCAQMD Permitting, Compliance staff along with facility representatives or their environmental consultants.
   2. Equipment description, applicable permit conditions, delineation of local, state, and federal rules and regulations, facility-wide requirements, facility contact information, listing of emission limits based on local, state and federal requirements, etc. provides easy access by the applicant and familiarization of where items are located.
   3. A similar permit format is used for SCAQMD's Regional Clean Air Incentives Market (RECLAIM) facilities subject to the RECLAIM program.
   4. When sections of a Title V Facility Permit require modification, only those sections affected can be modified and printed while keeping the rest of the permit intact. We ask the facility to replace only those sections that have changed, thereby, conserving resources by not printing the entire permit.
   5. The system used to produce the facility permits allow searchable data by types of equipment, rules, permit conditions, etc. Also, a program called FP (Facility Permit) Compare is available to the staff to compare permit revisions. The program helps transfer information from permit to evaluation, group equipment types and rules, and export searches.
   6. The public has direct access to the permits and public notices.

   Weakness:
   1. For certain facilities, like a refinery, the sheer enormity/volume of the permit can contain up to 400 pages.

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.**

The use and content of Statement of Basis have evolved over the years since the beginning of Title V program. For the early Initial Title V permits, SCAQMD only submitted a permit summary (PSUM) with the proposed permits; no Statement of Basis was included. Starting July 2005 a Statement of Basis is prepared for all Title V renewal permits and initially a Statement of Basis was also included for Initial Title V permit that was already proposed, upon request from EPA or members of the public. However, at this time a statement of Basis is being included for all Initial Title V permits and permit renewals.

The content of the Statement of Basis for refinery permits within SCAQMD has also evolved based on comments received from EPA. Specifically, applicability determinations were added for all affected federal rules, which greatly increased the scope and content of the Statement of Basis. This resulted in a more detailed and stronger Statement of Basis.

In addition to the Statement of Basis, SCAQMD developed a form, Titled "Title V Permit Summary", which provides a summary of the elements included the Title V permit. Members of the public have expressed that they find this summary form to be more useful in providing a quick overview of the proposed permit than the 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)?**

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

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

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

Staff was instructed in writing to include Statements of Basis. A template for the Statement of Basis was developed and is used by staff for all Statements of Basis. Due to the variety of industries, individual Statements of Basis are tailored and standardized within each permit processing team. Supervisory staff for each team train and guide the preparation of Statements of Basis which are also reviewed prior to permit proposals.

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)**

SCAQMD does not delay issuance of an Initial Title V Permit due to a SIP backlog, but it does complicate issuance of permits. We note in our Title V

Permit which rules and regulations are SIP approved, and therefore, federally enforceable. See sample permit for Boeing.

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

As mentioned earlier, SCAQMD has an integrated Title V Permit Program, so Permits to Construct are issued as Title V Permit and they do not delay issuance of an Initial Title V Permit due to NSR permit needs.

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

One of the tenets of the Title V program is that the facility is operating in compliance with all local, state and federal regulations or the facility is under a legally binding order to come into compliance with all such rules. When a facility is not in compliance with any of these rules, the SCAQMD will not recommend an initial or renewal/revision Title V permit unless they are operating under the SCAQMD's Regulation V – Procedure Before the Hearing Board, in particular, Rules 518, 518.1 and 518.2 – Variance Procedures for Title V Facilities, Permit Appeals for Title V Facilities, and Alternative Operating Conditions, respectively, or the facility is under an Order of Abatement issued by the SCAQMD Hearing Board. Obtaining these legal affirmations are time consuming and does delay issuance of an initial Title V Facility Permit.

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

SCAQMD does not delay issuance of an Initial Title V Permit due to pending EPA rule promulgation. We note in our Title V Permit which federal rules and regulations are in effect and follow any Permit Reopening provisions or requirements.

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

SCAQMD considers issuance of Initial Title V Permits a high priority. At the same time, SCAQMD tries to also process Title V Permit renewals and revisions in a timely manner. However, Title V program in general is very resource intensive, and as a result, it creates a burden on permitting staff and makes it very challenging to issue Title V Permit renewals and revisions, as well as Initial Title V Permits in a timely manner.

Y ☐ N ☑ **f. Awaiting EPA guidance**

SCAQMD staff has not waited for EPA guidance on when an Initial Title V Permit may be issued since we first started issuing Title V permits in the 1990's. SCAQMD has followed its Regulation XXX, TGD and existing

EPA guidance to issue Initial Title V permits and no delays have occurred due to this.

11. Any additional comments on permit preparation or content?

B. General Permits (GP)

Y ❑ N ☑ **1. Do you issue 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 ?

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

The SCAQMD has developed Periodic Monitoring Guidelines (November 1997) to help our engineers develop monitoring and record keeping conditions for all local Rules that did not contain sufficient monitoring requirements. These conditions are included during the process of issuing initial, renewal and revisions toTitle V permits. In addition, the SCAQMD implemented two monitoring guidelines that were jointly developed with CAPCOA, CARB, and EPA Region 9. Those are the Periodic Monitoring Recommendations for Generally Applicable Requirements in SIP (June 1999) and the Recommended Periodic Monitoring for Generally Applicable Grain Loading Standards in the SIP Combustion Sources (July 2001). In addition, a SCAQMD's TGD for the Title V Permit Program (latest version dated March 2005) was prepared to provide engineers and industry guidance on imposing conditions to incorporate periodic monitoring requirements when issuing Title V permits. Furthermore, periodic monitoring requirements are embedded in new or modified rules adopted since the inception of Title V program. As a result, permit engineers have adequate resources to assist them to incorporate periodic monitoring conditions in Title V permits.

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)**

Permitting staff attend CARB training courses on CAM and CEMS, which are exclusively held at SCAQMD. Some of the courses that SCAQMD Engineers, as well as Inspector have taken are listed below. CEMS and source test reports are reviewed by Source Testing engineers with extensive training and experience in source test methods and QA/QC procedures.

Organization	Course #/Description
CAPCOA	**CAPCOA Permitting Staff Development Class**
CARB	#215 – Particulate Matter Control
CARB	#216 – Volatile Organic Compounds (VOCs) Control Technology
CARB	#217 – Oxides of Nitrogen (NOx) & Carbon Monoxide (CO) Control Technology
CARB	**#220 – Compliance Assurance Monitoring**
CARB	**#221 – Continuous Emission Monitoring**
CARB	#273 – Industrial Boilers
CARB	**#297 – New Source Review**
CARB	**#298 – Title V Permitting Overview**
CARB	**#330 – CAPCOA Permitting**
CARB	**#401 – Comprehensive Continuous Emissions Monitoring**
SCAQMD	**PAATS/PPS Training**
SCAQMD	**New Source Review**

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?**

During the initial Title V process, monitoring requirements are added to the permits, in accordance with the monitoring guidelines mentioned above in 1a. Newer rules have incorporated monitoring requirements in each rule. The new monitoring conditions have resulted in better source compliance in some cases. For instance, a condition requiring periodic source testing for CO emissions was imposed on combustion equipment over 10 mmBtu/hr that did not have CO CEMS or other CO monitoring requirement. A facility had recently tested its exhaust vent pursuant to such condition and discovered that its CO concentration had exceeded the limit in SCAQMD Rule 407. As the result, the facility had to modify their equipment to re-route that exhaust stream to a combustion device.

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

Approximately 155 Title V permits have CAM monitoring requirements. Some examples of sources are waste water treatment plants, refineries using fluid catalytic cracking units, petroleum loading racks, printing operations, and coating operations. Typical control equipment include carbon adsorbers and thermal oxidizers.

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

Occasionally, the SCAQMD receives CAM Plans that are deemed incomplete due to missing Pollutant Specific Emission Units that are subject to CAM or inadequate definition of exceedances. In these circumstances, SCAQMD works with the facilities and informed the facilities to submit additional information in order to attain an approvable CAM Plan, in which case facilities follow through.

D. Public Participation and Affected State Review

<u>Public Notification Process</u>

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

We use the services of Daily Journal Corporation, California Newpaper Services and California Newspaper Service Bureau and their Adtech Advertising System. This system provides a listing of newspapers of general circulation and a list of zip codes it serves as well as the ethnicities. Staff posting the notice selects the newspaper based on the facility zip code identified in the newspaper's service area.

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

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?

Public notices are also published in Spanish news papers, as appropriate.

b. How do you determine which publications to use?

We use the services of Daily Journal Corporation, California Newpaper Services and California Newspaper Service Bureau and their Adtech Advertising System. This system provides a listing of newspapers of general circulation and a list of zip codes it serves as well as the ethnicities. Staff posting the notice selects the newspaper based on the facility zip code identified in the newspaper's service area, and if appropriate publishes notices for example in Spanish newspapers.

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

SCAQMD Rule 301 establishes a fixed fee for the TV notices based on the county where the facility is located. If the notice is combined with Rule 212(g) requirements, only one fee will apply. When possible we will combine notices for multiple companies that are in the same general area. See fee table below.

TABLE IIB
FEE FOR PUBLIC NOTICE PUBLICATION

County	Rule 212(g) Notice [(a)]	Title V Notice [(a)]
Los Angeles	$1,389.18	$835.53
Orange	$1,265.25	$619.41
Riverside	$274.72	$294.10
San Bernardino	$1,206.49	$557.01

[(a)] If Rule 212(g) and Title V notices are combined, pursuant to Rule 212(h), only Rule 212(g) publication fee applies.

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]**

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?**

Staff maintains several distribution lists. For example, there is a list that includes EPA, CARB, other air districts and Affected Indian Tribes. Other lists include environmental organizations, county public libraries, and selected school districts. Subscription Services staff maintains several lists for people that request information on Title V permits – for all permits, by county, or by city. Engineering staff also keeps a list of individuals and organizations that have expressed interest in a particular facility. In addition, Legislative and Public Affairs (LPA) staff develops and maintain lists with public officials based on geographic areas or interest in the type of project. Under certain circumstances, staff may contact elected officials and their staff, environmental and health organizations, and other stakeholders regarding Title V notices.

b. 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)

A person can request to be on a list by calling or sending a letter or email.

c. How does the list get updated?

Lists are updated based on requests for additions or deletions, or notification from the post office that the individual is no longer at the address and there is no forwarding address. LPA's source specific lists are maintained by verifying contacts on regular basis as they contain elected officials, government agencies, and community organizations. Additionally, community specific lists are created based on attendance at Title V Public Hearings or Public Consultation Meetings, Town Hall Meetings, community meetings and workshops and other public events.

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

Lists are kept indefinitely.

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

The public notice for Title V permits are mailed to the persons on the mailing list. The notice contains information on how to view the proposed permit, evaluation, and other pertinent documents related to the project online, at a local library or at SCAQMD office.

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

While the SCAQMD's Engineering and Compliance division is responsible for processing Title V permits and providing the requisite public notice to communities, the SCAQMD's Office of Legislative & Public Affairs (LPA) is the primary point of contact with environmental justice communities. (Environmental justice initiatives

were first recognized and incorporated by SCAQMD in 1997.) The mission of LPA is to promote public participation in, and understanding of, air quality issues, legislation, and policies. The South Coast Air Quality Management District (SCAQMD) reaches out to environmental justice communities through the Office of Legislative & Public Affairs (LPA), which includes the Public Advisor, Legislative Affairs, Government Relations, Community Outreach, and Small Business Assistance units. LPA provides information regarding SCAQMD regulatory, planning, and legislative activities to the general public, businesses, local governments, ethnic communities, and environmental organizations. To better serve environmental justice communities, LPA engages in the following efforts:

- **Environmental Justice Enhancements (2004-05):** The workplan was developed with public collaboration through public consultation meetings and EJ workshops in 2004. Section II-9 specifically focuses on Title V permitting and public notices:

  Section II-9 -Improve Opportunities for Public Participation in Permit Decisions
  Members of the public have raised concerns about being excluded from the District's permitting process.
  Staff will review the permitting process to:

(1) *identify opportunities to improve the timeliness and distribution of public notices about permit applications and proposed permit decisions;*

Public Notice on the Web – Public Notices for TV permits for Initial, Renewal and Significant Revisions are posted on SCAQMD's webpage. In addition, notices pursuant to Rule 212 are also posted on the web. E&C Staff uses a Public Notice Routing Checklist to the reasons for the web notice and the dates that they are posted. By default, the last 6 months notices are posted on the website.
http://www.aqmd.gov/home/permits/title-v/public-notices-and-hearings
http://www3.aqmd.gov/webappl/publicnotices2/

(2) *provide even more timely and complete access to permit applications and related documents consistent with state law;*

SCAQMD developed the Facility Information Detail (FIND) Program to allow the public to search for permit related information about SCAQMD regulated facilities, as well as information on Notices of Violation and Hearing Board Cases. The FIND application also allow the filtering to identify all TV facilities and related permit information.
http://www.aqmd.gov/home/tools/public/find

(3) *notify those who comment on permit applications about their right to appeal permit decisions to the Executive Officer and Hearing Board. –*

To enable the request for Public Hearing, Form 500 G TV Hearing Request Form was created. This can be found at http://www.aqmd.gov/home/permits/title-v/public-notices-and-hearings

Public Comment: Concern was expressed by business representatives whether this would slow down the permitting process and the relationship of this initiative to the Permit Streamlining Task Force which is being reinstated by the Board as part of the deliberations on budget issues. Response: This initiative is intended to facilitate the public participation process consistent with Title V and other AQMD rules and regulations including New Source Review and Rule 212. Staff will also bring this item to the attention of the Permit Streamlining Task Force for a comprehensive review.

Participation in Community Events: SCAQMD participates in dozens of community events, including A Taste of Soul, Cesar Chavez Day of Remembrance, Sixth Annual Long Beach Asthma Fair, throughout the year in environmental justice communities, during which staff distributes information regarding SCAQMD's clean air efforts. Most recently on October 2, 2015, the SCAQMD Governing Board approved a proposals to provide assistance with community and stakeholder outreach efforts related to SCAQMD's Environmental Justice Program, including but not limited to, the Environmental Justice Community Partnership Initiative. The Governing Board approved to execute a contract with Lee Andrews Group for consultant services for SCAQMD Environmental Justice Outreach and Initiatives for one year beginning in November 2015. As a background, in February 2015 during the SCAQMD's conference, "Environmental Justice for All: A Conversation with the Community," the SCAQMD Governing Board Chairman, Dr. Burke, announced the Environmental Justice Community Partnership (the Partnership) initiative. The Partnership's goal is to both strengthen and build SCAQMD's relationships and alliances with community members and organizations to work towards achieving clean air and healthy sustainable communities for everyone.

The consultant's expertise will assist SCAQMD in the following areas:

- Formation, coordination, and regular interaction with the Environmental Justice Community Partnership Advisory Council (Advisory Council);
- Execution of a series of 4 annual Environmental Justice Community Partnership workshops, or events, each to be held in a different community identified throughout the South Coast Air Basin; and the second annual Environmental Justice for All Conference in 2016 and;
- Execution of 4 community events, one in each county, to recognize outstanding local environmental justice community leaders.

- In addition, as one of SCAQMD's annual Clean Air Awards program, SCAQMD recognizes environmental stewardships in various areas. For this year at the 27th Annual SCAQMD's Clean Air Awards on October 2, 2015, the SCAQMD awarded Legacy LA and the Legacy LA Youth Council the Clean Air Youth Award for Promotion of Good Environmental Stewardship. Ramona Gardens in Boyle Heights is one of LA's oldest public housing complexes, and currently is next to a busy 12-lane freeway, a rail line, and numerous factories and warehouses. In addition the more than 5,000 residents of this complex in Boyle Heights face a poverty rate of over 40% and unemployment near 19%. Legacy LA's mission is to empower nearly 200 local youth to reach their full potential to "build a dream and build a legacy" in this challenging neighborhood.
-
    - **Hosting of Community Events:** SCAQMD has held community meetings related to Title V permits, prior to deadlines for comment and public hearing, to provide stakeholders with

background information on the facility and the permitting process. SCAQMD also hosts multiple events throughout the year in environmental justice communities. Events include:
    - Environmental Justice Community Partnership Events
    - A Martin Luther King Day of Service Forum
    - Cesar Chavez Day of Remembrance

- **Distribution of Bilingual Materials:** The following fact sheets and brochures are available in Spanish (other materials are also available in other languages):
    - Introduction to SCAQMD
    - 1800-CUT-SMOG – Reporting Air Quality Problems
    - Air Quality Index
    - Fire Safety Alert – Tips for Seniors
    - 10 Tips for Improving Our Air
    - Connect to Clean Air – SmartPhone and Ipad App

- **Translation at Meetings Held in Environmental Justice Communities:** Translation services are provided at meetings held in environmental justice communities. We have provided translations of the meetings in Spanish, Mandarin, and Vietnamese.

- **Outreach to Community Leaders:** SCAQMD reaches out to key community leaders and organizations who can then distribute the information to others.

- **Publications:** The SCAQMD also promotes the following items to help inform community members about clean air issues in their communities, and how they can contribute to the SCAQMD's clean air efforts:
    - **Clean Air Choices Program:** Helps buyers identify lower-emitting vehicles
    - **SCAQMD Advisor –** A bi-monthly newsletter that features interesting articles on air quality issues.

Environmental Justice Partnership

In 2015, the SCAQMD announced the Environmental Justice Partnership as a Chairman's initiative to strengthen the agency's commitment to achieving environmental justice for all.

- **Mission:** The mission of the Environmental Justice Community Partnership (the Partnership) is to strengthen relationships and build alliances with community members and organizations to achieve clean air and healthy sustainable communities in the South Coast Air Basin.

- **Goals:** The goal of the Partnership is to host a series of quarterly events and workshops which began in June 2015, to facilitate open dialogue and information sharing on community and air quality issues and to offer access to learning opportunities and empowerment resources between SCAQMD and community members, government officials and representatives, businesses, health, environmental, academic institutions, and others.

- **Environmental Justice Community Partnership Advisory Council (Advisory Council):** The Advisory Council, which will be formed in the last quarter of 2015, will assist with the creation and implementation of air quality related events or workshops that best address the needs of

environmental justice communities in Los Angeles, Orange, Riverside, and San Bernardino counties. The Advisory Council will also provide SCAQMD with valuable feedback on how to best promote a two-way flow of communication with stakeholders.

- **Events:** Key elements of The Partnership initiative are to provide community members and local businesses with opportunities to learn about air quality related issues, to hold forums to share information on community issues, and to offer access to learning opportunities and empowerment resources. Each outreach opportunity (e.g. workshops, events, conferences) conducted under The Partnership must be **1)** Geographically specific **2)** Held equally throughout SCAQMD's four-county jurisdiction **3)** Relevant to the targeted community:

    - **Environmental Justice for All Conference**: The partnership outreach programs will culminate in an environmental justice conference that will bring together stakeholders from all events held throughout the year with the intent to have a broader forum to share information gained and lessons learned.
    - **Environmental Justice Community Partnership Workshops/Events (4):** Each of the four events will be held in a different community identified throughout the South Coast Air Basin. Efforts will include forums, training opportunities, and special presentations to educate and to receive feedback from the participants on air quality, SCAQMD rules and programs, and other related topics.
    - **Regional Environmental Justice Community Leaders Recognition Series (4)**: These four meetings (one in each county) will focus on identifying local environmental justice leaders who are seeking to improve the quality of life in their communities. The events will foster relationships between SCAQMD and the residents whom the Board represents, by broadening awareness of environmental justice relative to air quality, acknowledging current leaders, and expanding opportunities to identify problems and jointly seek solutions.

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

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

Newspaper notices are no longer an effective method for public notice, because newspapers are not widely read anymore, and legal notices are not read by many of the people that still subscribe or receive newspapers. Using email lists and social media (Twitter, Facebook, LinkedIn, etc.) to notify interested parties and updating the SCAQMD website are more effective mechanisms to inform the public.

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?**

SCAQMD provides notices in languages besides English as appropriate for the community stakeholders. The SCAQMD strives to enable all affected community members to participate in the permitting process; thus, it is necessary to translate

notices into the appropriate language of the majority of the community members. In relation to Title V notices, Spanish is the most commonly used language for translations.

Public Comments

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

When SCAQMD was issuing the initial Title V permits for refineries, we worked with the environmental groups and communities and agreed to upfront provide a 60 days, instead of 30 days, comment period. Also occasionally, a request is made to extend a public comment period, which the SCAQMD considers, as appropriate.

Y ☐ N ☑

a. Has the Department ever denied such a request?
In general we don't extend public comment periods, however, if an extension request is legitimate, such that a notice did not get sent to an individual who requested it or it was sent late, SCAQMD may extend the public comment period.

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

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.**

The public has suggested improvements to both the contents of our public notice and the public participation process. Comments vary from writing the public notice in less technical terms to creating YouTube videos or posting on other social media type sites to inform the public about Title V notices and the process.

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

Since SCAQMD has an integrated Title V Permit Program, there are numerous Title V Permit Revisions issued for Title V sources incorporating Permits to Construct or to Modify into the Title V Permits. Given the vast number of Title V Permits (initial, renewal and revisions) issued by SCAQMD, public comments have been received for less than ten percent of refinery permits, and less than five percent for other types of facilities.

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

Typical comments are opposing a project in their neighborhood due to aesthetics or projects should not be located near schools, hospitals, and residential areas. During the initial Title V process for refineries, general comments were received about not

granting permits to the refineries. Over time, comments have gotten more specific to the project, and many comments are related to the CEQA process are also received for Title V Permits to Construct.

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

For power plant and refinery projects, there has been an increased amount of public comments not only from the public, but also from labor unions. Again since SCAQMD has an integrated Title V Permit Program, many comments are actually related to the CEQA documents associated with Title V Permit Revisions which include Permits to Construct or to Modify equipment at the facility.

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

This is hard to quantify but occasionally a facility operator will agree to add permit conditions to limit the types of compounds used to reduce emissions and/or potential health impacts in response to public comments. Also in some cases permits are changed based on comments received from EPA or public.

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

Environmental justice advocacy groups and community members are very interested in certain types of facilities, such as refineries, power plants, and some facilities that emit toxic air contaminants. They often request information on Title V permitting actions and provide comments, but not necessarily always as part of the formal Title V public comment period.

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

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

SCAQMD would re-propose and re-notice a permit if there were substantial changes to the project after the public notice and comment period.

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)?**

SCAQMD Rule 3003 – Applications, includes paragraph (i)(7) which specifies that,

to the extent possible, the public noticing and review by the public, EPA, and affected States will commence simultaneously. If substantial public comments are received, they are sent to EPA, and additional time could be requested by EPA for review.

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

The information posted on the SCAQMD website begins with a copy of the letter sent to EPA to request their review. The public notice follows, and then additional information, such as the draft permit.

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?

SCAQMD Rule 3003 – Applications, includes paragraph (i)(7) which specifies that, to the extent possible, the public noticing and review by the public, EPA, and affected States will commence simultaneously.

Permittee Comments

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

Staff works with permittees prior to issuing a public notice, depending on the complexity of the project.

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?**

Typically, staff works with permittees before a draft permit is issued for public comment, so it would be unusual for a permittee to comment at this stage of the process. Nonetheless, in some cases staff receives comments during the public comment period from the applicant.

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)?

Criteria for requesting Title V Public Hearings are listed in SCAQMD Rules and on the Public Hearing request forms that are available with the public notice and on our website.

SCAQMD adopted Rule 3006 – Public Participation in 1993 to address the public participation procedures for Title V permitting. Under Rule 3006(a)(1)(F), the criteria for requesting public hearings are listed and any person may request a proposed permit hearing by filing a request (Form 500-G) within 15 days of the date of a publication notice. Also the criteria for requesting public hearings is summarized in Form 500-G.

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

SCAQMD scheduled public meetings for all initial Title V Permits for the refineries and some of them more controversial project upfront and notified the public in the public notices that if requests are received that meet the requirements to hold public hearings, the meetings will be an official public hearings, otherwise SCAQMD will still hold a public meeting to cover the same information that would have been covered in a public hearing. Public hearings for Title V permits are rare for SCAQMD, however, we occasionally will hold public consultation meetings (not public hearings) for controversial projects and plan those to occur early in the public comment period in order to provide information and seek feedback from interested parties.

Availability of Public Information

Y ☐ N ☑ **21. Do you charge the public for copies of permit-related documents? If yes, what is the cost per page?**

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?**

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?

Public notices include information on where to obtain permit-related information, such as on the website, nearby libraries or SCAQMD office. Permit-related documents are also available in public libraries near the facility. Also the most recent compliance status are typically available as part of the permit evaluation.

Historical information such as deviation reports, monitoring reports and compliance certifications can be requested by filling out a Public Records Request Form.

Y ☑ N ☐

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

See Above.

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

As mentioned above several types of information related to permits are readily available on our website, nearby public libraries or at SCAQMD offices. In addition, SCAQMD does its best to respond to requests for additional information as quickly as possible to avoid requests to extend the public comment period. Typically, requests for information that is readily available are handled in a few days. Finally, there are additional information about emissions, permits and other compliance information that is available on SCAQMD website under the FIND program and readily available to public.

Y ☑ N ☐

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

Y ☐ N ☑

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

It would be very uncommon for information requests to delay permit issuance.

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)?

Information posted on the website related to a Title V facility permit action include a letter to EPA transmitting the permit action for their 45-day review, a copy of the public notice, the application materials, draft permit, statement of basis, and a public notice checklist. Other information can be included, if relevant, such as a CEQA document prepared related to a facility modification that is the subject of the permit revision. In addition, other information related to any facility, such as permit listing, emissions reports, compliance status, etc. are available on SCAQMD's website under the FIND program.

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

The website is updated for specific permitting actions as they develop. Each

notice clearly specifies how the public can comment or request a public hearing using a standard form available on SCAQMD's website.

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

Newspaper notifications are expensive and seem very ineffective. SCAQMD uses email lists of interested parties and posts information on the web site. SCAQMD has taken steps to provide the required legal notice for Title V notices, while also providing the public with the same information in less technical terminology. One effective strategy has been to target outreach to key community leaders and organizations who can explain the information to others. SCAQMD also has held community meetings related to Title V permits prior to deadlines for comment and public hearing to provide stakeholders with background on the facility and the permitting process.

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.**

Information regarding the 60-day citizen petition period was recently incorporated into the public notices.

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

The SCAQMD website provides information on the Title V program and permit process, including electronic copies of printed collateral materials to provide the public on the agency, how to file complaints, and get involved in other ways. Also SCAQMD's Legislative and Public Affairs office is in constant communications with public and Environmental Justice groups (please see response to earlier questions related to Environmental Justice) to assist them in public participation in various activities related to SCAQMD and air quality.

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

While we do not have formal training classes, there is information on our web site about how the public can participate in many different aspects of the SCAQMD process, including how to comment on pending permits. Information is also provided during public meetings on controversial projects.

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

a. Where are they in the organization?

Staff in the Office of Legislative & Public Affairs (LPA) is one of the departments in the organization.

b. What is their primary function?

LPA includes the Public Advisor, Legislative Affairs, Government Relations, Community Outreach, and Small Business Assistance units. The mission of this group is to promote public participation in, and understanding of, air quality issues, legislation and policies. LPA staff provides information regarding SCAQMD regulatory, planning and legislative activities to the general public, businesses, local governments, ethnic communities, and environmental organizations.

Affected State Review and Review by Indian Tribes

31. How do you notify tribes of draft permits?

Tribes are notified by mail of pending Title V permit actions near their Tribal Lands.

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

No.

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

We are looking at how to make the wording in public notices more understandable to the general public, and how to better use social media and other mechanisms to reach interested parties.

Any additional comments on public notification?

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?**

No Title V permit revisions have been processed under this provision.

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?**

   From 2010 to 2014, a total of 1,105 revisions were processed.

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

      i. **Significant**

         8% (84 applications)

      ii. **Minor**

         80% (886 applications – includes de minimis revisions)

      iii. **Administrative**

         12% (135 applications)

      iv. **Off-permit**

         No applicable permits.

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

         No applicable permits.

3. **How many days, on average, does it take to process (from application receipt to final permit revision):**

   a. **a significant permit revision?**

      In 2014, 265 days

   b. **a minor revision?**

      In 2014, 184 days

4. **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.**

   In 2014:
   Significant permit revisions took 108 to 496 days to process (Average of 265 days)
   Minor permit revisions took 1 to 476 days to process (Average of 184 days)

Administrative permit revisions took 61 to 383 days to process (Average of 176 days)

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

We have developed templates for the Title V (Regulation XXX) evaluation for different types of revisions – Administrative, Minor, DeMinimis Significant and Significant. The templates assist the engineer in performing a complete evaluation, including ensuring the accumulation of emission increases from previous revisions since the initial Title V or the last renewal is carried forward to determine if the current revision would be considered Significant. All applications are entered into our Permit Administration and Application Tracking System (PAATS) database. In PAATS, the permit applications associated with a revision are grouped with the Title V revision application so the emissions can be accumulated properly and the equipment in the revision is captured. The NSR computer program tracks emission increases since the initial Title V or last renewal was issued so when the processing engineer enters the emissions for the current project, a message will appear if the current project emissions plus the previous accumulated emissions exceed the trigger for Significant revision. In addition, a history of revisions and associated emissions, since the last initial Title V renewal permit, is added to Title V evaluations.

We submit proposed revisions to US EPA Region IX electronically with a cover e-mail summarizing the project (agreed upon template of cover e-mail) which starts the EPA 45-day review period the day the proposed revision is electronically sent, rather than having to wait the few days for hard copies to arrive by regular mail.

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

Various stages of the application processing are captured in the computer system when the application is entered into PAATs, sent to the team for processing, assigned to an engineer, prescreened, initiated in PPS and recommended for approval. These actions can be reviewed in an application diary. Title V revision applications also have a separate tracking system that captures a few key actions/dates.

In our PAATS system we have developed a series of tracks for each type of Title V permit application. The system provides tracks for both our Title V permitting program and also for our related REgional Clean Air Incentives Market (RECLAIM) facility permit tracking. The list of tracks is included here:

Title V Permitting Tracks

	Application Type
1	INITIAL TITLE V APPLICATION - TIERED(1-20 DEVICES)
2	INITIAL TITLE V APPLICATION - TIERED(21-75 DEVICES)
3	INITIAL TITLE V APPLICATION - TIERED(76-250 DEVICES)

4	INITIAL TITLE V APPLICATION - TIERED(251+ DEVICES)
5	MINOR TITLE V PERMIT REVISIONS
6	DE MINIMUS SIGNIFICANT TITLE V PERMIT REVISIONS
7	SIGNIFICANT TITLE V PERMIT REVSIONS
8	TITLE V RENEWAL APPLICATION
9	ADMIN TITLE V CHANGES-NOT C/O
10	ADMIN TITLE V CHANGES-C/O
11	TITLE V/RECLAIM MINOR PERMIT REVISIONS
12	TITLE V/RECLAIM MINOR PERMIT REVISIONS-NO EVAL
13	TITLE V/RECLAIM De MINIMUS SIGNIFICANT REVISIONS
14	TV/RECLAIM SIGNIFICANT REVISIONS
15	PHASE I AND II INITIAL TITLE V APPLICATIONS
16	NO EMISSIONS - SIGNIFICANT TITLE V REVISION
17	NO EMISSIONS -- TV/RECLAIM SIGNIFICANT REVISIONS
18	RECLAIM-TV C/O

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.**

Guidance documents such as the Title V TGD and others for various rules and Title V permitting were developed. Policy memos are issued as needed. These documents and memos are readily available electronically to all staff.

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

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

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?**

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).

The public notice (required for significant revisions) has a narrative summary paragraph describing the type of facility and what they are requesting to change (i.e., proposing to install a new boiler, etc.). The Background section and Regulation XXX evaluation of the permit evaluation describes the proposed changes in more detail. Only the Sections of the facility permit that are proposed to be changed are

sent to EPA and included on our website for public review, in addition to the permit evaluation and public notice.

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

See Q10 above. Only those provisions of the facility permit that are proposed to be changed are sent to EPA and included on our website for public review. The notice includes a statement that the "proposed permit is available for public review."

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?

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

It is generally easier to issue permits if there are no CAM plans required. Reviews for any rule updates and compliance status can make the process lengthy and time consuming.

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

Our website has the Title V Technical Guidance Document, a Title V Application Matrix which identifies what forms are required for renewals, all Title V forms, as well as required fees, and links to the applicable rules. As a courtesy, we also send out letters to the facilities approximately 9 months before the permit expiration date to remind them that their renewal application should be submitted. The process is essentially the same as for the initial Title V permits.

15. What % of renewal applications have you found to be timely and complete?

In 2014, 93% of renewal applications were timely and complete. 67 out of 72 renewals received met the permit shield requirements. TV facilities are sent reminder letters for the renewal applications 9 months before the permit is to expire (3 months before the applications are due). In addition, SCAQMD sends reminder letters to Title V sources 9 months prior to expiration of their Title V permits, reminding the sources that their Title V Renewal applications are required to be filed no later than 6 months prior to the expiration date of their Title V permits.

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

Currently, there are 69 renewal applications in house.

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?**

Coinciding EPA's 45 days review with the 30 days public review has helped to reduce the time required to process the permit renewals within the part 70 timeframes.

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

Yes, in some cases when a rule changes we may need to revise certain sections of the Title V facility permit for facilities subject to the rule. For example, we did this in 2005 due to an amendment to Rule 1171. The Title Page, Table of Contents, Section K and Appendix B of the Title V permits were revised. Another example is, in 2008, Exide Technologies exceeded the NAAQS for lead at their fenceline monitors. As a result, SCAQMD, under Rule 3005(g)(5), re-opened for cause Exide's Title V permit and revised the permit by reducing process feed rates in order to help mitigate future potential ambient air exceedances of the NAAQS.

F. Compliance

1. Deviation reporting:

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

Facilities are required to report to SCAQMD any deviation classified as an emergency, a breakdown which results in a violation of any rule or permit condition not specified in subparagraph (b)(3)(B) of SCAQMD Rule 430, or one which results in excess emissions.

Reference: SCAQMD Rule 430 (b)(1); see also SCAQMD Rule 2004 (i) and Section K, Conditions #22A, B, C, and D of SCAQMD-issued Title V operating permits.

Y ☑ N ❑ **b. Do you require that some deviations be reported by telephone?**

A person shall report by telephone or other District-approved method, any breakdown which results in a violation of any rule or permit condition not specified in subparagraph (b)(3)(B) to the Executive Officer within one hour

of such breakdown or within one hour of the time said person knew or reasonably should have known of its occurrence. Such report shall identify the time, specific location, equipment involved, responsible party to contact for further information, and to the extent known, the causes of the breakdown, and the estimated time for repairs. In the case of emergencies that prevent a person from reporting all required information within the one-hour limit, the Executive Officer may extend the time for the reporting of required information provided such person has notified the Executive Officer of the breakdown within the one-hour limit. Sources are required to report breakdowns to SCAQMD by telephone at 1-800-CUT-SMOG within an hour of the time of actual or reasonable discovery of any equipment malfunction that does or could reasonably result in the release of excess emissions.

Reference: SCAQMD Rule 430 (b)(1); see also SCAQMD Rule 2004 (i) and Section K, Conditions #22A, B, C, and D of SCAQMD-issued Title V operating permits.

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

Within seven calendar days after a reported breakdown has been corrected, but no later than thirty calendar days from the initial date of the breakdown, unless an extension has been approved in writing by the Executive Officer, the owner or operator shall submit a written Breakdown Emissions Report to the Executive Officer which includes:

(A) an identification of the equipment involved in causing, or suspected of having caused, or having been affected by the breakdown;

(B) the duration of the breakdown;

(C) the date of correction and information demonstrating that compliance is achieved;

(D) an identification of the types of emissions, if any, resulting from the breakdown;

(E) a quantification of the excess emissions, if any, resulting from the breakdown and the basis used to quantify the emissions;

(F) information substantiating that the breakdown did not result from operator error, neglect or improper operation or maintenance procedures;

(G) information substantiating that steps were immediately taken to correct the condition causing the breakdown, and to minimize the emissions, if any, resulting from the breakdown;

(H) a description of the corrective measures undertaken and/or to be undertaken to avoid such a breakdown in the future; and

(I) pictures of the equipment which failed, if available.

Reference: SCAQMD Rule 430 (b)(2); see also SCAQMD Rule 2004 (i) and Section K, Conditions #22A, B, C, and D of SCAQMD-issued Title V operating permits.

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 Title V reporting forms, including those which document deviations, are required to be signed (certified) by the responsible official representing the facility. The name of the responsible official is listed in Section A of the facility's Title V permit. For all reports, the responsible official must certify that, based on information and belief formed after reasonable inquiry, the statements and information in the reports are true, accurate, and complete.

Title V facilities are required to complete and submit reports to SCAQMD using the following forms:

Deviation Report - Form 500-N
Each Title V facility must clearly identify and report any instances of deviations (noncompliance), including but not limited to breakdowns, emergencies, excess emissions, non-compliance with recordkeeping and reporting requirements, etc., from an applicable requirement or condition on the Title V permit by using Form 500-N, which is used to document the date, time, and duration of the deviation, the probable or known cause of the deviation, any corrective actions or preventive measures that were taken, and a certification of the information submitted by a responsible official as previously described.

Semi-Annual Monitoring report (Form 500-SAM)
Every Title V facility is required to complete and submit a Semi-Annual Monitoring report (Form 500-SAM) documenting any deviations that occurred during the first and second six months of the calendar year. Section K, Condition 23 of each Title V permit identifies the actual reporting periods and due dates for submittal of these reports.

RECLAIM and non-RECLAIM Title V Facilities whose permit conditions include additional reporting of required monitoring activities (e.g., CEMS reports, required monthly recordkeeping, etc.) are required to submit such reports as scheduled in their permit condition. "Required monitoring" includes, in addition to continuous emission monitoring, any reporting observations, calculations, measurements, sampling and other oversight activities involving the operation of a facility's equipment for which the Title V permit requires records be kept.

Unless specified in the Title V permit or it is required by other regulations, the facility is not required to submit all monitoring data and records to

SCAQMD, but must *keep all records on site for inspection as requested* and must report whether they have performed all monitoring and recordkeeping as required by their Title V permit.

Annual Compliance Certification (Form 500-ACC)
Title V permit holders are required to certify annually that their facility is in compliance with the conditions of their permit. The first annual compliance certification does not include the period preceding the effective date of the initial Title V permit. Form 500-ACC must be submitted to SCAQMD and EPA by March 1st. Cycle 2 RECLAIM facilities should submit the Annual Compliance Certification Form annually at the time the Annual Permit Emissions Program report is due. Listing non-compliant operation on the compliance certification does not protect the facility from possible enforcement.

Non-Compliance Operations Report and Compliance Plan (Form 500-C2)
A Title V facility must submit Form 500-C2 to SCAQMD to provide a detailed description of non-compliant activities and how compliance was achieved following violations of permit conditions and/or rule requirements. A facility that continues to operate in violation of such requirements may obtain an Alternative Operating Condition in accordance with Rule 518.2. Form 500-C2 must also be completed and submitted to describe how compliance has been achieved with the conditions of any variance or order for abatement granted to a Title V facility by the SCAQMD Hearing Board.

Reference: Draft Technical Guidance Document for the Title V Permit Program

Y ☑ N ❑ **i. Do you require all certifications at the time of submittal?**

Although certifications are required at the time of submittal, staff who review and scan Title V submittals may determine that the signatory purporting to certify the submittal on behalf of the facility is not the responsible official on record with SCAQMD. In such instances, inspectors are notified of the discrepancy and asked to follow up with facility personnel to ensure that the submittal is properly certified, by:

(A) obtaining the signature of the responsible official on record,
(B) requiring the facility to submit Form 500-RO that captures the name, title and signature of the individual who signed the submittal, or
(C) requiring the facility to submit Form 500-RO that captures the name, title and signature of the individual to be designated as the new responsible official.

This is most frequently accomplished by issuing the facility a Notice to Comply requesting the appropriate action be taken within 14 calendar

days. The compliance deadline may be extended up to 30 days from the date the Notice to Comply was issued; failure to comply with this requirement may result in the issuance of a Notice of Violation.

Reference: Form 500-RO

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)?

We do not allow back dating of certifications.

2. How does your program define deviation?

The term ***deviation*** is not defined in Part 70. It is generally understood to mean any failure to comply with a permit term - which may or may not result in an administrative or emissions-related violation. In the absence of a federal definition for deviation, the description on EPA's reporting form, 6-MONTH MONITORING REPORT, for deviation under Part 71 is used as reference:

"Deviations from permit terms occur when any permit term is not met, including emission control requirements and compliance assurance methods (monitoring, recordkeeping, and reporting). ...the following are examples of deviations:

(1) emissions that exceed an emission limit;

(2) parameter value that indicates that an emission limit has not been met;

(3) observations or data that show noncompliance with a limitation or other requirement;

(4) an exceedance or excursion as defined in 40 CFR part 64 (CAM);

(5) required monitoring that is not performed; and

(6) failure to submit a report.

You also must include deviations from permit terms that occur during startup, shutdown, malfunction, and upset conditions. A deviation is not necessarily a violation; violations will be determined by EPA (or its delegate Agency)." [http://www.epa.gov/air/oaqps/permits/pdfs/sixmon.pdf]

Reference: Title V Draft Technical Guidance Document

Y ❑ N ☑

a. Do you require only violations of permit terms to be reported as deviations?

Violations of permit conditions and any applicable rule requirements other than those specified in SCAQMD Rules 430 (b)(3)(B) and 2004 (i) **must** be reported as deviations. In addition, Section K of each Title V permit defines the different types of incidents reportable as a deviation under 40 CFR Part 70. These deviations are listed below, along with the relevant condition in Section K.

- Emergency – Section K, Condition 17

  "An emergency [any situation arising from sudden and reasonably unforeseeable events beyond the control of the operator, including acts of God, which (A) requires immediate corrective action to restore normal operation; and (B) causes the facility to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency; and (C) is not caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error] constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limit only if:

  (A) Properly signed, contemporaneous operating records or other credible evidence demonstrate that:

  (1) An emergency occurred and the operator can identify the cause(s) of the emergency;

  (2) The facility was operated properly (i.e., operated and maintained in accordance with the manufacturer's specifications, and in compliance with all regulatory requirements or a compliance plan) before the emergency occurred;

  (3) The operator took all reasonable steps to minimize levels of emissions that exceeded emissions standard s or other requirements of the permit; and,

  (4) The operator submitted a written notice of the emergency to SCAQMD within two working days of the time when the emissions limitations were exceeded due to the emergency. The notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken; and

  (B) The operator complied with the breakdown provisions of Rule 430 – Breakdown Provisions, or subdivision (i) of Rule 2004 – Requirements, whichever is applicable [3002 (g), 430, 2004 (i)]."

- Breakdown – Section K, Condition 22 (A)

  "Breakdowns shall be reported as required by Rule 430 – Breakdown Provisions or subdivision (i) of rule 2004 – Requirements, whichever is applicable."

- Excess Emission – Section K, Condition 22 (B)

  "Other deviations from permit or applicable rule emission limitations, equipment operating conditions, or work practice standards, determined by observation or by any monitoring or testing required by the permit or applicable rules that result in emissions greater than those allowed by the permit or applicable rules shall be reported within 72 hours (unless a shorter reporting period is specified in an applicable State or Federal Regulation) of discovery of the deviation by contacting SCAQMD enforcement personnel assigned to this facility or otherwise calling (800) CUT-SMOG."

- Other deviation – Section K, Condition 22 (D)

"All other deviations shall be reported with the monitoring report required by condition no. 23."

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?**

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

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":**

Y ❑ N ☑ **A. during scheduled routine maintenance or calibration checks**

Under RECLAIM and Rule 218 provisions, monitor outages during routine and allowed maintenance or calibration periods are not considered deviations, so no reporting is required.

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

Under RECLAIM and Rule 218 provisions, monitor outages during routine and allowed maintenance or calibration periods are not considered deviations, so no reporting is required.

Y ☑ N ❑ **C. due to an emergency**

Y ☑ N ❑ **vii. Other? Describe.**

Any excess emissions beyond limits specified in Title V permit conditions and/or applicable rules.

3. Do your deviation reports include:

Y ☑ N ❑ **a. the probable cause of the deviation?**

Reference: Form 500-N, item #10

Y ☑ N ❑ **b. any corrective actions taken?**

Reference: Form 500-N, Item #13

Y ☑ N ❑ **c. the magnitude and duration of the deviation?**

Reference: Form 500-N, Items #11 & 6

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

See response to Question 1(b) above re: breakdown reporting; see also Title V permit, Section K, Condition 22.

Y ☑ N ❑ **5. Do you require a written report for deviations?**

For every reportable deviation, Form 500-N must be completed, signed/certified by the Title V facility's responsible official, and submitted to SCAQMD.

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

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

SCAQMD requires that all signed/certified Title V report forms be received by the agency prior to stated deadlines. The postmark date or date of hand-delivery is used to determine the timeliness of the submittal.

a. deviation reports?

Upon receipt, deviation reports (Form 500-N) are scanned into SCAQMD's OnBase imaging system. The inspector assigned to the facility reviews the report and verifies the information provided is accurate.

b. semi-annual monitoring reports?

Upon receipt, semi-annual monitoring reports (Form 500-SAM) are scanned into SCAQMD's OnBase imaging system. The inspector assigned to the facility reviews the report and verifies the information provided is accurate.

c. annual compliance certifications?

Upon receipt, annual compliance certification reports (Form 500-ACC) are scanned into SCAQMD's OnBase imaging system. The inspector assigned to the facility reviews the report and verifies the information provided is accurate.

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

a. deviation reports

100%

b. semi-annual monitoring reports

100%

c. annual compliance certification

100%

9. Compliance certifications

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

SCAQMD requires that each Title V facility timely complete and submit an Annual Compliance Certification (Form 500-ACC) signed/certified by the facility's responsible official.

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?

Form 500-ACC requires facilities to disclose whether compliance is continuous or intermittent; in the latter case, facilities must describe in detail how such compliance has been achieved.

Form 500-SAM requires facilities to verify that monitoring activities required by Title V permit conditions have been conducted properly.

Reference: Form 500-ACC, Item #3; Form 500-SAM, Section III, Item #1

Y ☑ N ❑

iii. Do you require sources to use the form? If not, what percentage does?

All Title V sources within SCAQMD's jurisdiction must timely complete and submit an Annual Compliance Certification (Form 500-ACC) and Semi-Annual Monitoring reports (Form 500-SAM) signed/certified by the facility's responsible official.

Y ☑ N ❑

iv. Does the form account for the use of credible evidence?

Form 500-SAM summarizes deviations, emergencies, breakdowns, and other instances of noncompliance for each six-month period from January 1 – June 30 and July 1 – December 31. Copies of Form 500-C2 (Non-Compliance Operations Report and Compliance Plan) and Form 500-N (Deviations, Emergencies & Breakdowns) describing such instances of noncompliance in a given six-month reporting period are required to be appended to each Form 500-SAM report. Form 500-N specifically requests credible evidence to prove that the facility has returned to compliance.

Reference: Form 500-N, Item #16 (b)

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?

Form 500-SAM requires facilities to verify that monitoring activities required by Title V permit conditions have been conducted properly.

Reference: Form 500-SAM, Section III, Item #1

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:

The Emergency Provision provides an affirmative defense to action brought for non-compliance with technology-based emission limits only and ONLY when all four criteria are met. The facility must also refer to Section K, Condition 17 for more specific requirements and applicability. If the deviation is the result of an emergency involving a technology-based limitation, a facility should also comply with the SCAQMD requirements for a Title V permit (Rule 3002(g)), and either Rule 430 - Breakdown

Provisions, or Rule 2004 (i) - Requirements (RECLAIM). Complying with these requirements can give a facility an affirmative defense to enforcement action.

Y ☑ N ❑ **i. Provide relief from penalties?**

Providing that an affirmative defense has been established.

Y ☑ N ❑ **ii. Provide injunctive relief?**

Providing that an affirmative defense has been established.

Y ☑ N ❑ **iii. Excuse noncompliance?**

Providing that an affirmative defense has been established.

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

Title V Permit, Section K, Condition 22 (B) requires that excess emissions greater than those required by the permit or applicable rules be reported as a deviation to SCAQMD.

Y ❑ N ☑ **i. Provide relief from penalties?**

Self-reported deviations are to be brought to the prompt attention of the responsible Senior Enforcement Manager for determination of appropriate enforcement action. Legal staff determine whether such action, if any, is subject to assessment of penalties.

Y ❑ N ☑ **ii. Provide injunctive relief?**

Self-reported deviations are to be brought to the prompt attention of the responsible Senior Enforcement Manager for determination of appropriate enforcement action. Legal staff determine whether such action, if any, may be precluded by injunctive relief.

Y ❑ N ☑ **iii. Excuse noncompliance?**

Self-reported deviations are to be brought to the prompt attention of the responsible Senior Enforcement Manager for determination of

appropriate enforcement action. Legal staff determine whether such action, if any, may be excused.

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?**

The source is required to submit Form 500-N along with properly signed, contemporaneous operating records or other credible evidence necessary to establish an emergency defense. The burden of proof is on the source to demonstrate it has met the requirements to establish an affirmative defense. SCAQMD is not specifically required to provide written concurrence to validate the source's claim of an affirmative defense. Self-reported deviations are to be reported promptly to the responsible Senior Enforcement Manager for determination of appropriate enforcement action.

Reference: Enforcement Action General Guidelines Form 500-N

Y ❑ N ☑ **ii. the SIP excess emissions provision?**

Not applicable.

Y ❑ N ☑ **iii. NSPS/NESHAP SSM excess emissions provisions?**

SCAQMD does not provide written concurrence to validate the source's qualification for the NSPS/NESHAP SSM excess emissions provision.

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?**

12. Any additional comments on compliance?

Following each annual compliance determination at a Title V facility, the inspector completes and forwards a report (CMS Form) of findings to the SCAQMD Title V coordinator, who enters the data into the EPA database.

G. Resources & Internal Management Support

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

a. If so, what are they?

Staff are usually assigned multiple application types, Title V and Non-TV applications and have to prioritize their workload on competing priorities to issue permits for both TV and non-TV facilities.

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?

No

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

Weekly reports are provided to supervisors and managers.

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

Each permitting team holds periodic meetings to discuss permitting issues. Each supervisor may hold meetings with their staff. Managers also hold meetings with their staff on a regular basis.

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

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

The fee is based on cost recovery for the time spent by the permit processing engineers to process the different types of TV permits. This has lead to a combination of a flat fee rate and/or combination with a Time and Material Component. For instance, the TV renewal has an initial processing fee and if the time spent on the application exceeds 8 hours a Time and Material hourly fee is charged. The processing engineer prepares a time and material summary sheet for all initial and renewal applications.

b. What is your title V fee?

See SCAQMD Rule 301(m). There are different fees for the various application types (Initial, Renewal and Revisions).

6. How do you track title V expenses?

The SCAQMD has work program codes that are used to budget resources to specific activities. Each of the 250+ lines of the work program identifies the amount of labor (number of full-time equivalent (FTE) employees budgeted to an activity. The electronic timecard system allows employees to code (track) their actual hours spent on any given activity using the appropriate work program codes. In addition, other direct (non-labor) expenditures are charged to the appropriate work program codes and certain overhead costs associated with the activities are allocated.

7. How do you track title V fee revenue?

Each Title V application type (Initial, Renewal and Revision) is assigned a unique application number. The fees collected for each application is extracted to determine revenues. In addition, there is a flat fee for each Title V facility. The annual emission fees are identified by the Title V facility ID numbers.

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

In 2015, there were 54 full time engineers who worked on Title V permits.

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

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

Permit writers with assigned Title V applications contribute approximately 45% of their time to Title V permits.

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

The electronic timecard system allows employees to code (track) their actual hours spent on any given activity. There are Work Program Codes specifically for Title V activities (vs. other non-Title V activities).

Y ☐ N ☑ **10. Are you currently fully staffed?**

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

Currently, there are 460 Title V applications to 54 permit writers, or 8.5 applications per permit writer.
There are 392 Title V facilities, or 7.3 facilities (permits) per permit writer.

12. Describe staff turnover.

The SCAQMD has an aging workforce, and turnover due to retirements are inevitable. Retirements of supervisors and managers have created opportunities for promotions, which, consequentially, result in turnover at the permitting engineer level. Transfers to other divisions within the agency are allowed so as not to limit the professional growth of the permit engineers. SCAQMD recently hired 20 new engineers to assist in processing of both Title V and Non-Title V permits and is in the process of hiring more engineers to fill additional vacancies in Engineering & Compliance Office.

a. How does this impact permit issuance?

Typically a TV facility is assigned to an experienced engineer in permitting TV facilities. There is a steep learning curve for the new hire or the transferred engineer if he or she has no prior TV permitting experience.

b. How does the permitting authority minimize turnover?

In 2015, a significant number of vacant engineering positions were filled at the entry level position, and all new engineers were given training on the Title V program. Vacated supervisor and management positions have been filled through internal promotions, thus retaining the experienced staff within the permitting division.

Y ☑ N ❑ 13. Do you have a career ladder for permit writers?

a. If so, please describe.
Assistant Air Quality Engineer – Entry level
Air Quality Engineer I – Automatic promotion after 6 months to 1 year as an assistant with satisfactory or above performance
Air Quality Engineer II – Automatic promotion after 1 year as AQEI
Senior Engineer – By competitive promotion
Air Quality Analysis and Compliance Supervisor – By competitive promotion
Manager – By competitive promotion
Assistant Deputy Executive Officer – By competitive promotion
Deputy Executive Officer – By competitive promotion

Y ☑ N ❑ 14. Do you have the flexibility to offer competitive salaries?

In each position there are several salary steps. There is some flexibility to offer new hires a higher step in salary range based on experience.

Y ☑ N ❑ 15. Can you hire experienced people with commensurate salaries?

Yes. Also see question 14.

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

New engineers – when a group of engineers are hired together, we conduct a series of training sessions. Frequently this occurs when a group of inspectors are also hired, so some of the training is done together on the general SCAQMD functions. The engineers are also provided training on the various computer programs related to permitting – how to use them and what information is available to assist in permit processing. Basic rules are explained such as New Source Review (Reg. XIII), Rule 1401 – NSR of Toxic Air Contaminants (and how to conduct screening risk assessments), Title V (Reg. XXX), RECLAIM (Reg. XX), Rule 212 public notice requirements, etc. The senior and/or supervising engineer of the specific team will provide sample permits and permit evaluations for equipment the team typically handles. The new engineers are also encouraged to go out to visit facilities to get a good understanding of the equipment they are evaluating, and how it operates so they can write an accurate permit description and enforceable permit conditions.

For existing engineers, training classes are offered periodically. This includes training classes offered by CARB, CAPCOA and USEPA. For example, recently, training was conducted on how to use the new modeling program AERSCREEN Policy guidance. Typically memos or e-mails are developed when necessary to document rule interpretations/clarifications and distributed to all engineers. These are also posted on our intranet, as well as training opportunities offered.

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?**

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

Yes, a refresher training and feedback by EPA staff based on their experiences in reviewing TV permits would be useful to ensure consistency and ensure all requirements are addressed.

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

Engineers are grouped in teams based on the types of facilities they handle. Some teams are further separated by those handling major sources (Title V and RECLAIM facilities) or those handling non-major sources. For those handling major sources,

the facilities are distributed among the engineers so each engineer has specific companies assigned for virtually all permitting issues – permits, Title V revisions, Title V renewals, Hearing Board, etc. The engineer will become familiar and develop a rapport with the contact person at the facility, have a good understanding of how the facility operates, the equipment they have, and their permitting issues/history. When a facility enters the Title V program, the assigned engineer can more efficiently and accurately prepare the initial Title V facility permit. Likewise, when the Title V permit is renewed, the engineer has most likely done the previous revisions and knows what updates may be required.

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

The Title V Permit Program is a very resource intensive program and in itself puts a burden on resources. In addition to that, other challenges include training and bringing new permit engineers up to speed, competing priorities, and staff turnovers in the Engineering Division.

Environmental Justice Resources

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

If so, may EPA obtain copies of appropriate documentation?

The South Coast Air Quality Management District (SCAQMD) has one of the earliest and most comprehensive Environmental Justice (EJ) programs which encompass various aspects of our air quality control and public health protection program, including, but not limited to, permitting. As an example, permitting engineers apply the SCAQMD's rigorous rules and regulations when assessing a permit application. For example, a permitted facility must be in compliance with the District's toxic rules (1401 et seq.) which set limits for maximum incremental cancer risk and, if located near a school, Rule 1401.1 provides additional health protection to children. Other source specific rules, such as Rule 1470 (Requirements for Stationary Diesel-Fueled Internal Combustion and Other Compression Ignition Engines), Rule 1148.1 (Oil and Gas Production Wells), and Rule 1148.2 (Notification and Reporting Requirements for Oil and Gas Wells and Chemical Suppliers), place specific restrictions and notification requirements on facilities nearby sensitive receptors. All of the SCAQMD's rules and regulations are available on our website.

Additionally, the SCAQMD does engage in further environmental justice outreach and defines environmental justice as "…*equitable environmental policymaking and enforcement to protect the health of all residents, regardless of age, culture, ethnicity, gender, race, socioeconomic status, or geographic location, from the health effects of air pollution."* The purpose of SCAQMD's Environmental Justice program is to ensure that everyone has the right to equal protection from air pollution and fair access to the decision-making process that works to improve the quality of air within

their communities. To support its EJ efforts, the SCAQMD formed the Environmental Justice Advisory Group.

Environmental Justice Advisory Group:

The Environmental Justice Advisory Group serves as an advisory group to the SCAQMD Governing Board, with a focus on air quality and environmental justice issues in the area served by SCAQMD.

- **Mission:** The mission of the EJAG is to advise and assist SCAQMD in protecting and improving public health in SCAQMD's most impacted communities through the reduction and prevention of air pollution.

- **Goals:** The goals of the EJAG are to:
    - Advise the SCAQMD on issues related to environmental justice
    - Create and sustain a positive and productive relationship between SCAQMD and community members
    - Better inform SCAQMD about environmental justice issues
    - Assure that SCAQMD makes meaningful and continuous progress toward the achievement of environmental justice through its decision activities

- **Membership:** SCAQMD shall ensure that the EJAG include an ethnically and geographically diverse membership, consisting of up to 30 members, with at least two members from each county and representatives from the most highly impacted communities within SCAQMD's jurisdiction. Members will serve staggered four-year terms. Upon recommendation by the EJAG Chair, appointments will be made by the Chairman of the Board with consideration for Board Member input, and following review by the Administrative Committee. The same process, as above, applies for reappointments to fill any vacancy or for removal of a member.

- **Structure & Process:** The EJAG shall meet at least four times per year for in-depth discussions of one or two high priority topics at each meeting as suggested by members and staff. The meetings may take place at AQMD Headquarters or in host communities. The EJAG may form subcommittees to work on specific issues with staff.

- **Meetings:** In order to assure efficient and productive meetings, staff shall circulate background materials at least 10 days prior to each meeting. Members and the public may submit questions and comments to staff and other members prior to each meeting. Meetings shall include:
    1. An opportunity for members to provide community updates;
    2. Discussion and analysis of policy and other issues;
    3. Formulation of recommendations; and
    4. Time for planning, developing action items, and agenda-setting for future meetings.

- **Tasks:** The EJAG's tasks shall include:
    1. Reviewing and assessing the status of past SCAQMD environmental justice work plans and making recommendations for future environmental justice work plans;
    2. Reviewing policy issues and agency activities that impact environmental justice communities (*e.g.*, goods movement, climate change, land use planning, cumulative

impacts, air toxics, decision-making/risk/precautionary principles, community relations, complaint resolution, permitting/enforcement/rulemaking); and

3. Reviewing and making recommendations on how to address community concerns.

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

On August 18, 2015, the SCAQMD hired a Senior Public Information Specialist specifically to coordinate environmental justice efforts for the agency. The individual:

- Acts as lead environmental justice coordinator and contact for the SCAQMD, including staffing and coordinating the SCAQMD Environmental Justice Advisory Group, the Environmental Justice Partnership, and all environmental justice conferences, events and initiatives.
- Researches, identifies and analyzes emerging environmental justice programs and related issues, and recommends or assists in the achievement of goals and objectives related to SCAQMD's environmental justice program.
- Creates positive working relationships with environmental justice organizations and community leaders and/or active residents living in and around environmental justice communities; interacts with representatives of environmental justice organizations and communities to represent SCAQMD and report back to management stakeholders' relative concerns, as well as possible resolutions to effectively address those concerns.
- Builds and maintains cooperative alliances with environmental justice organizations and communities, and participates in or speaks at various meetings, or other events to share information and inform stakeholders regarding SCAQMD's environmental justice program, as well as other relative programs and services offered by the agency.
- Prepares a wide variety of correspondence, recommendations, reports, and other written documents related to SCAQMD's environmental justice program, intergovernmental affairs program, or in response to inquiries, concerns, complaints, and suggestions relative to the above-referenced programs and activities. Consults with other professional and technical staff members to gather pertinent facts and information in order to effectively communicate complex and scientific issues, both verbally and in writing, in such a way that community members can easily understand.
- Participates in public information, public participation, and community liaison programs, as needed, to advise and disseminate information to legislators, local officials, and the general public, school districts, public agencies, small business, and private organizations.
- Prepares speeches, testimony or other communications targeted to key audiences for management or Board members.

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

In 1997, SCAQMD adopted 4 guiding principles and 10 initiatives to ensure environmental justice for all. Two of the ten EJ Initiatives were specifically related to permitting. A policy memo was issued on February 23, 1999 to implement EJ Initiative #9 to address EJ issues as it relates to permits issued for Various Location Permits. EJ Initiative #10 was addressed in subsequent amendments to Rule 1401 –

New Source Review for Toxic Air Contaminants, Rule 1401.1 - Requirement for New and Relocated Facilities Near Schools and Rule 1402 - Control of Toxic Contaminants from Existing Facilities.

Tools to Determine EJ Areas and Impacted Communities
E&C management and selected permitting staff have participated in the demonstration of EPA's EJScreen tool and CalEPA EnviroScreen. These are used on a case-by case basis to determine EJ impact areas where the TV facilities are located prior to issuance of the public notice.

SCAQMD developed, for the implementation of the Carl Moyer program, an Environmental Justice Area utilizing Geographic Information System (GIS) and using 2008-12 poverty data, 2012 PM2.5 monitoring levels and MATES III cancer risk. In addition, E&C has the capability of utilizing GIS to identify the demographics of the areas that may be impacted .

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

See 23.

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.**

See 23.

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:

For all the areas below, staff's understanding and technical knowledge has improved over time, but it cannot be exclusively attributed to the Title V program. These efforts have been part of the SCAQMD's permitting program since inception, and continuous improvement is an ongoing goal.

Y ☑ N ❑ **a. NSPS requirements?**

Y ☑ N ❑ **b. The stationary source requirements in the SIP?**

Y ☑ N ❑ **c. The minor NSR program?**

Y ☑ N ❑ **d. The major NSR/PSD program?**

Y ☑ N ❑ **e. How to design monitoring terms to assure compliance?**

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?**

The SCAQMD has had a robust compliance division since its inception in 1977 so the inclusion of the Title V program did not improve over what has been historically one of our main priorities - to find all stationary sources (major and non-major) that have a potential to emit or control air emissions. The inclusions of fugitive emissions towards the determination of PTE has brought a number of facilities into the TV program that would have otherwise not been regulated.

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.)?**

The SCAQMD has had a robust engineering division since its inception in 1977. The inclusion of the Title V program did not improve over what has been historically one of our main priorities - to permit all stationary sources that have a potential to emit or control air emissions.

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

This is true on limited circumstances. The SCAQMD's Annual Emission Reporting (AER) program was developed to track emissions of air contaminants from permitted facilities. Fees for emissions of air contaminants are assessed based on the reported data. These fees help to cover the costs of evaluating, planning, inspecting, and monitoring air quality efforts. Under this program, facilities that emit more, pay more toward air pollution control efforts – and at the same time are given an incentive to reduce emissions. This program was developed well in advance of the Title V program.

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

The SCAQMD has had a robust compliance and engineering division since its inception in 1977. The inclusion of the Title V program did not improve over what has been historically one of our main priorities - to permit all stationary sources that have a potential to emit or control air emissions. Part of SCAQMD permits have always included permit conditions that govern the operation of the equipment to ensure compliance with federal (New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP)), state (air toxics control measures (ATCMs) and pertinent health and safety codes, and local rules and regulations (SCAQMD).

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.**

The SCAQMD's permitting program was already well established at the time the Title V program started. Permit applications have always been handled by several permitting teams organized based on industry types. This organizational structure ensures that similar industrial processes are consistently regulated. In addition, permit applications are reviewed by a Senior Engineer and an Air Quality Analysis and Compliance Supervisor prior to issuance. Major Source permits are usually reviewed and approved by a Senior Manager. This review and approval procedure helps ensure that similar sources are consistently permitted.

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.**

In addition to organizational structure described above, rule interpretation and rule implementation documents are issued to clarify the intent of rule language or when several potential approaches exist, to guide consistent permitting actions.

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	☐	☑	☐	☐
b. prior to issuing a draft permit	☐	☑	☐	☐
c. after issuing a final permit	☐	☑	☐	☐

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)	☐	☐	☐	☑
b. SIP requirements	☐	☐	☐	☑
c. Minor NSR requirements (including the				

requirement to obtain a permit) ❑ ❑ ❑ ☑

d. Major NSR/PSD requirements (including the requirement to obtain a permit) ❑ ❑ ❑ ☑

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

This is to collectively respond to Part a through g below:
In recent years, facilities within the SCAQMD have been subject to more stringent and more complicated requirements under federal, state, and local rules and regulations. Title V permits imposed additional monitoring and reporting requirements. In response, facility operators have increased their resources devoted to managing their operations to ensure compliance with environmental regulations. Increased activities covered under the sections below have been observed in varying degrees at Title V facilities. However, it is difficult to attribute the increase solely to any one program including Title V.

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.**

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

The Title V program imposed additional monitoring and reporting requirements. Facilities subject to Title V requirements may have increased their awareness and corrected issues at an earlier stage than they might have otherwise done. This may have reduced emissions. On the other hand, SCAQMD rule requirements have continued to require emission reductions since the Title V program took effect. Total reported emissions have been on the decline. It is difficult to quantify how much of the emission reduction was the result of Title V program. However, it is not expected to be appreciable compared to emission reductions attributed to compliance with other rule requirements**.**

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?**

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

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)**

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

Y ❑ N ☑ **f. clarity and enforceability of NSR permit terms**

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)**

Y ❑ N ☑ **h. emissions trading programs**

Y ❑ N ☑ **i. emission 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)?**

The reporting of fugitive emissions and equipment exempt from permit has brought to attention those facilities with substantial facility wide emissions.

Y ☑ N ❑ **10. Has title V changed the way you conduct business?**

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.

The SCAQMD has had a robust compliance and engineering division since its inception in 1977. The inclusion of the Title V program did not improve over what has been historically one of our main priorities- to permit all stationary sources, Major and Non-major sources, or exempt from written permit (Rule 219) sources that have a potential to emit or control air emissions.

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.**

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

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

Public involvement has added complexity to the way SCAQMD issues permits. There is a considerable increase in cost and SCAQMD staff time to perform the following tasks: develop the public notice; submittal to local newspapers and cost for publication; individual notices sent email or hard copy to those requesting notice for Title V permits from several Mailing Lists; responding to public comments, and in some cases having a public meeting. Obtaining a public meeting location in the general vicinity of the facility is a costly endeavor; providing notification of the public meeting to the public and local political/government officials consumes SCAQMD staff time from both Engineering & Compliance division, Legal Office and Public Advisor's Office to coordinate these meetings. Cost for fixed assets such as newspaper publication, printing of flyers/notices, mailing/distribution costs are increased. This process has increased the length of time the applicant must wait to obtain permits.

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?**

SCAQMD staff is routinely given training for compliance and engineering purposes, including CARB training, EPA training, outside association such as Air & Waste Management Association, academia, and neighboring air pollution

control districts and air quality management districts. This training is not specifically tied into Title V fee funding as it is part of the General Fund.

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

SCAQMD staff are routinely provided computers, laptops, cell phones, radios, monitoring and detection equipment/devices, etc. with no more resources specifically provided by the Title V fee program.

Y ❑ N ☑ **c. better funding for travel to sources?**

The SCAQMD is a delegated Title V agency and does not require additional funding for travel outside our jurisdiction where our compliance staff already has dedicated automobile transportation that is provided by the SCAQMD General Fund.

Y ❑N ☑ **d. stable funding despite fluctuations in funding for other state programs?**

The SCAQMD has had its own fee structure since its inception and the addition of Title V fees has assisted in keeping our budget stable considering the amount of time and monies needed to implement the Title V program.

Y ❑ N ☑ **e. incentives to hire and retain good staff?**

The SCAQMD has not specifically provided incentives to hire and retain good staff solely for Title V purposes. In general, the SCAQMD always endeavors to provide opportunities to those competitively qualified persons wishing to be employed by one of the leading air quality agencies in the world.

Y ❑N ☑ **f. are there other benefits of the fee program? Describe.**

As mentioned in item d., the fee program has assisted in keeping our budget stable.

Y ❑ N ☑ **12. Have you received positive feedback from citizens?**

There has not been positive feedback from citizens directed specifically to the Title V program. Public notices of Title V permit changes have been regularly provided. Only a very small percentages of these notices generate comments by the public. The vast majority of these comments were on the subject changes and not on the Title V program.

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.

The Title V program provides a one stop review of permit equipment descriptions, applicable permit condition on the equipment level, and facility-wide level, and all applicable federal, state and local rules and regulations that the equipment and facility must meet. This includes operating limitations, maintenance and record keeping requirements, method of records retention and time period for retention. Fee billing and collection for the entire facility is a benefit to the company as all required fees are due at the same time. These benefits are to the applicants more so than to the SCAQMD as many new programs had to be utilized to facilitate those changes.

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

The provision to provide public notices for TV sources have led to increased public awareness of the types of facilities in the neighborhoods and communities.

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?

EPA assistance not addressed elsewhere in this questionnaire

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

Staff appreciates EPA's expedited review of Title V permits when specifically requested for those facilities that need to install control systems or modify processes to reduce emissions.

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

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

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[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 7 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.

l 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.[21] 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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[21]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/region07/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 15 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).

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

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.

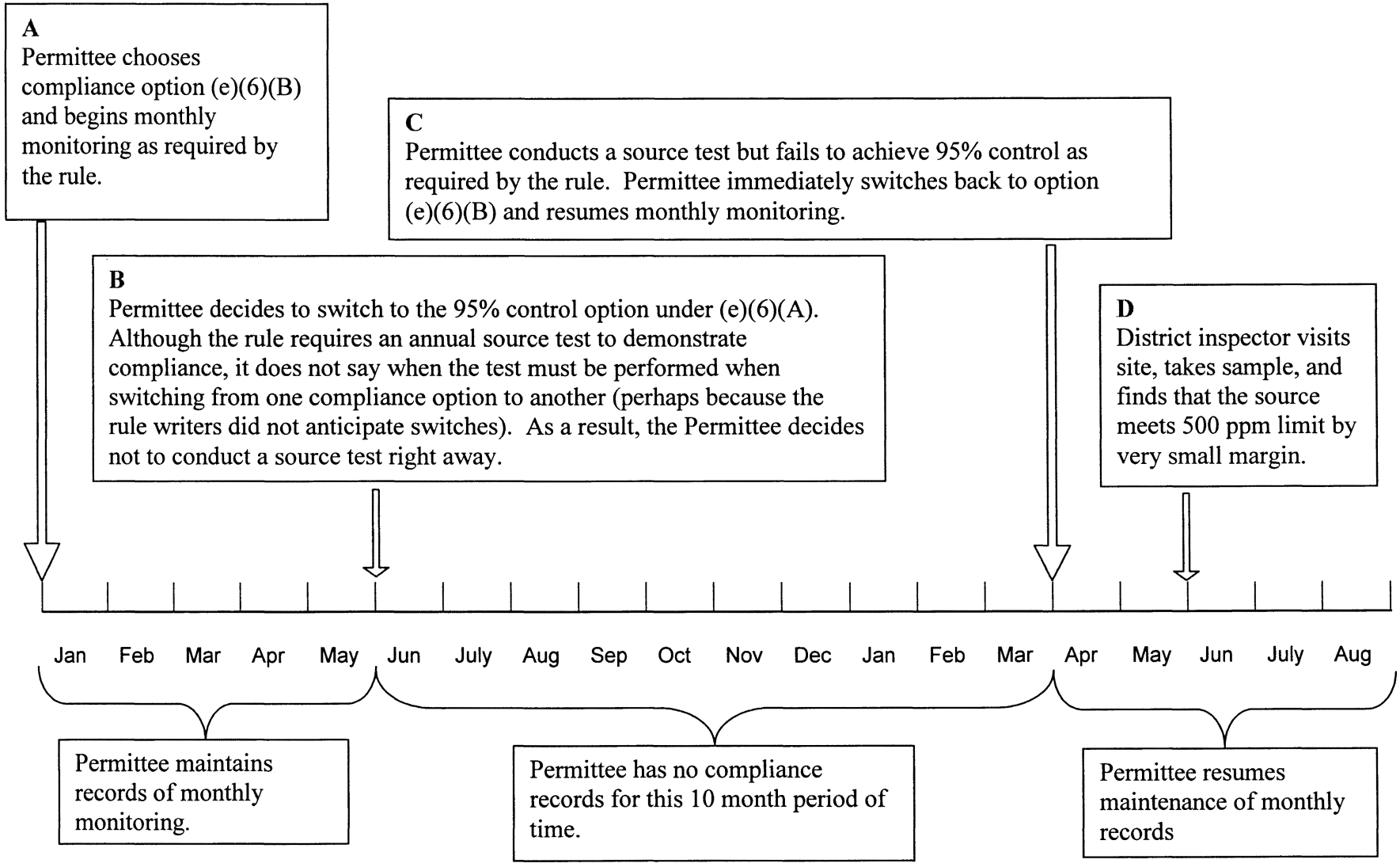
C. *Equipment E2022*
Cleaning equipment exemption

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.*

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):
>
> (A) The identification of each term or condition of the permit that is the basis of the certification;
>
> (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;
>
> (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
>
> (D) Such other facts as the permitting authority may require to determine the compliance status of the source.
>
> (iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority.
>
> (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:

[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:
>
> 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.

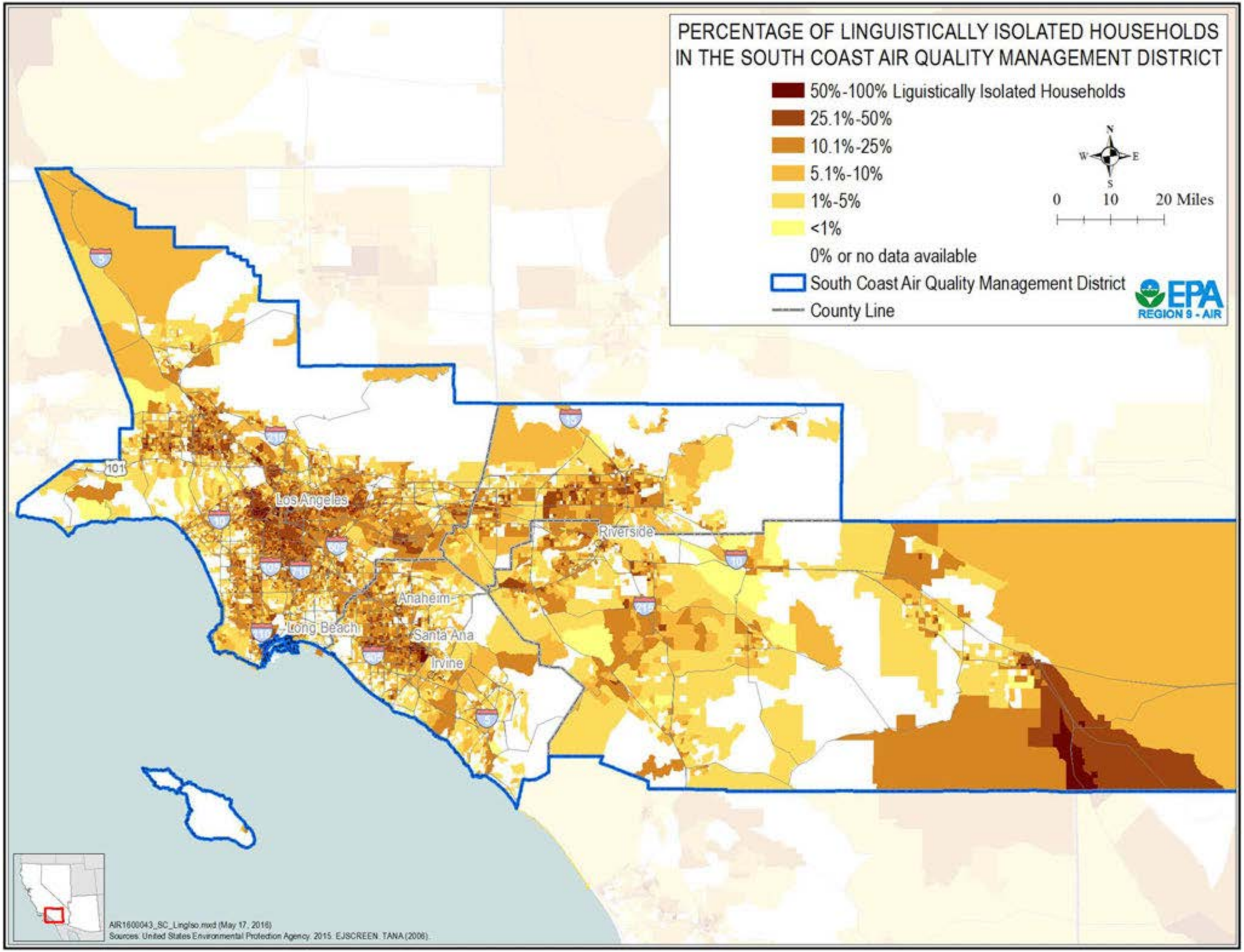
Elements of a Statement of Basis

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
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 similar source). These decisions could be part of the permit package or reside in a publicly available document.	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 2) Ensure that the rationale for the selected monitoring method or lack of monitoring is clearly explained and documented in the permit record.	The SOB must include a basis for its periodic monitoring decisions (adequacy of chosen monitoring or justification for not requiring periodic monitoring)	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
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."		√

Appendix D. Map of Linguistically Isolated Households in Southern California


PERCENTAGE OF LINGUISTICALLY ISOLATED HOUSEHOLDS
IN THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
50%-100% Liguistically Isolated Households
25.1%-50%
10.1%-25%
5.1%-10%
1%-5%
<1%
0% or no data available
South Coast Air Quality Management District
County Line
N
W
E
S
0
10
20 Miles
EPA
REGION 9 - AIR
Los Angeles
Riverside
Anaheim
Long Beach
Santa Ana
Irvine
101
AIR1600043_SC_Linglso.mxd (May 17, 2016)
Sources: United States Environmental Protection Agency. 2015. EJSCREEN. TANA (2006).

Appendix E. Title V Fee Information

August 4, 1993

MEMORANDUM

SUBJECT: Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V

FROM: John S. Seitz, Director /s/
Office of Air Quality Planning and Standards (MD-10)

TO: Air Division Director, Regions I-X

On December 18, 1992, I issued a memorandum designed to provide initial guidance on the Environmental Protection Agency's (EPA's) approach to reviewing State fee schedules for operating permits programs under title V of the Clean Air Act (Act). Today's memorandum updates, clarifies, revises, and replaces the earlier memorandum.

Section 502(b)(3) of the Act requires that each State collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V permits program. [As used herein, the term "State" includes local agencies.] The final part 70 regulation contains a list of activities discussed in the July 21, 1992 preamble to the final rule (57 FR 32250) which must be funded by permit fees. This memorandum and its attachment provide further guidance on how EPA interprets that list of activities, as well as the procedure for demonstrating that fee revenues are adequate to support the program.

The memorandum and attachment set forth the principles which will generally guide our review of fee submittals. The EPA believes that these positions are consistent with the preamble and final rule and are useful in explaining the broad language in the promulgation, but in no way supplant the promulgation itself. In evaluating State program submittals, EPA will make judgments based on the particular design and attributes of the State program, as well as the requirements of section 70.9 of part 70.

The policies set out in this memorandum and attachment are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party.

Several substantive revisions to the earlier guidance that are reflected in this document deserve special mention. First, with respect to activities which relate to provisions of the Act in addition to title V, the revisions clarify that the cost of those activities would be permit program costs only to the extent the activities are necessary for part 70 purposes. For example, this qualification would apply to activities undertaken pursuant to sections 110, 111, and 112 of the Act. In determining which of the activities normally associated with State Implementation Plan (SIP) development are to be funded by permit fees, for instance, States should include those activities to the extent they are necessary for the issuance and implementation of part 70 permits. Accordingly, if a SIP provision requires that a State perform or review a modeling demonstration of a source's impact on ambient air quality as part of the permit application process, the State's costs which arise from the modeling demonstration (which are ordinarily not permit program costs) must be covered by permit fees.

Second, the revisions provide that case-by-case maximum achievable control technology determinations for modified/ constructed and reconstructed major toxic sources under section 112(g) of the Act are considered permit program costs, even if the determination preceded the issuance of the part 70 permit. This position is consistent with the Agency's guidance on Title V Program Approval Criteria for Section 112 Activities (issued April 13, 1993). In that guidance, EPA explained that in order to obtain approval of their title V permit programs, States must take responsibility for implementing all applicable requirements of section 112, including section 112(g), to fulfill their broader obligation to issue title V permits which incorporate all applicable requirements of the Act. For this reason, these section 112 activities are appropriately viewed as permit program costs and thus funded with permit fees.

Third, the revisions clarify in section II.L that enforcement costs incurred prior to the filing of an administrative or judicial complaint are considered permit program costs, including the issuance of notices, findings, and letters of violation, as well as development and referral to prosecutorial agencies of enforcement cases. This approach is based on legislative history which indicates that Congress viewed the filing of complaints as the beginning of enforcement actions for purposes of the statutory provision that excludes "court costs or other costs associated with any enforcement action" from the costs to be recovered through permit fees.

Fourth, the revisions take a different approach to "State-only" requirements which are part of the title V permit by concluding that part 70 does not require that permit fees cover the costs of implementing and enforcing such conditions, since the rule requires that States designate these requirements as not federally enforceable.

Fifth, the attachment modifies the discussion of the extent to which title V fees must fund the costs of permit programs under provisions of the Act other than title V. After carefully considering section 110(a)(2)(L) (which requires that every major source covered by a permit program required under the Act pay a fee to fund the permit program), as it relates to section 502(b)(3) in general, and section 502(b)(3)(A)(ii) in particular, EPA has concluded that title V fees must cover the costs of implementing and enforcing not only title V permits but of any other permits required under the Act, regardless of when issued. This result makes sense, since the title V permit will incorporate the terms of other permits required under the Act so that enforcing title V permits will have the effect of implementing and enforcing those permit requirements as well. However, the costs of reviewing and acting on applications for permits required under Act provisions other than title V need not be recouped by title V fees. In conclusion, the costs of implementing and enforcing all permits required under the Act must be considered in determining whether a State's fee revenue is adequate to support its title V program. However, States may opt to retain separate mechanisms and procedures for collecting permit fees for other permitting programs under the Act, provided the fees covering the costs of implementing and enforcing permits are included in the determination of fee adequacy for purposes of title V.

Although most of the changes outlined today are not expected to affect significantly whether EPA will find fee programs based on the earlier guidance adequate, we will assist States in resolving any difficulties which may have resulted from reliance on the December 18 guidance.

As a means of providing support for the Regional Offices and States on fee approval issues, we invite early submittal of fee analyses (separate from the entire program submittal) from States, particularly those which propose to charge less than the presumptive fee minimum. We will assist Regional Offices in reviewing these submittals with respect to the requirements of title V. Case-by-case reviews of fee programs which you believe are ripe for review offer a timely opportunity to provide additional guidance on this issue.

If you would like us to assist with review of a State's fee program, please contact Kirt Cox. For further information, you may call Kirt at (919) 541-5399 or Candace Carraway at (919) 541-3189.

Attachment

cc: Air Branch Chief, Regions I-X
Regional Counsel, Regions I-X
M. Shapiro
J. Kurtzweg
A. Eckert
B. Jordan
R. Kellam
J. Rasnic

ATTACHMENT

GUIDANCE FOR STATE FEE PROGRAM DEVELOPMENT

I. GENERAL PRINCIPLES

- States must collect, from part 70 sources, fees adequate to fund the reasonable direct and indirect costs of the permits program.

- Only funds collected from part 70 sources may be used to fund a State's title V permits program. Legislative appropriations, other funding mechanisms such as vehicle license fees, and section 105 funds cannot be used to fund these permits program activities.

- The 1990 Amendments to the Clean Air Act (Act) generally require a broader range of permitting activities than are currently addressed by most State and local permits programs. Title V and part 70 contain a nonexclusive list of types of activities which must be funded by permit fees.

- Title V fees present a new opportunity to improve permits program implementation where funding has been inadequate in the past.

- The fee revenue needed to cover the reasonable direct and indirect costs of the permits program may not be used for any purpose except to fund the permits program. However, title V does not limit State discretion to collect fees pursuant to independent State authority beyond the minimum amount required by title V. The evaluation of State fee program adequacy for part 70 approval purposes will be based solely on whether the fees will be sufficient to fund all permit program costs.

- Any fee program which collects aggregate revenues less than the $25 per ton per year (tpy) presumptive minimum will be subject to close Environmental Protection Agency (EPA) scrutiny.

- If credible evidence is presented to EPA which raises serious questions regarding whether the presumptive minimum amount of fee revenue is sufficient to fund the permits program adequately, the State must provide a detailed demonstration as to the adequacy of its fee schedule to fund the direct and indirect costs of the permits program.

- The EPA encourages State legislatures to include flexible fee authority in State statutes so as to allow flexibility to manage fee adjustments if needed in light of program experience, audits, and accounting reports. States should be able to adapt their fee schedules in a timely way in response to new information and new program requirements.

II. ACTIVITIES EXPECTED TO BE FUNDED BY PERMIT FEES

A. Overview.

- Permits program fees must cover all reasonable direct and indirect costs of the title V permits program incurred by State and/or local agencies. For example, fees must cover the cost of permitting affected units under section 404 of the Act, even though such sources may be subject to special treatment with respect to payment of permit fees.

- In making the determination as to whether an activity is a title V permits program activity, EPA will consider the design of the individual State's title V program and its relationship to its comprehensive air quality program. State design of its air program, including its State Implementation Plan (SIP), will in some cases determine whether a particular activity is properly considered a permits program activity. For example, if a SIP provision requires that a State perform or review a modeling demonstration of a source's impact on ambient air quality as part of the permit application process, the State's costs which arise from the modeling demonstration (which are ordinarily not permit program costs) would be part of the State's title V program costs. Because the nature of permitting-related activities can vary from State to State, the EPA intends to evaluate each program individually using the definition of "permit program costs" in the final regulation.

- In general, EPA expects that title V permit fees will fund the activities listed below. However, in evaluating State program submittals, EPA will consider the particular design and attributes of the State program. It is important to note that the activities listed below may not represent the full range of activities to be covered by permit fees. Implementation experience may demonstrate that additional activities are appropriately added to this list. Additionally, some States may have further

program needs based on the particularities of their own air quality issues and program structure.

- States may use permit fees to hire contractors to support permitting activities.

B. Initial program submittal, including:

- Development of documentation required for program submittal, including program description, documentation of adequate resources to implement program, letter from Governor, Attorney General's opinion.

- Development of implementation agreement between State and Regional Office.

C. Part 70 program development, including:

- Staff training.

- Permits program infrastructure development, including:

  * Legislative authority.

  * Regulations.

  * Guidance.

  * Policy, procedures, and forms.

  * Integration of operating permits program with other programs [e.g., SIP, new source review (NSR), section 112].

  * Data systems (including AIRS-compatible systems for submitting permitting information to EPA, permit tracking system) for title V purposes.

  * Local program development, State oversight of local programs, modifications of grants of authority to local agencies, as needed.

  * Justification for program elements which are different from but equivalent to required program elements.

- Permits program modifications which may be triggered by new Federal requirements/policies, new standards [e.g., maximum achievable control technology (MACT), SIP, Federal implementation plan], or audit results.

D. Permits program coverage/applicability determinations, including:

- Creating an inventory of part 70 sources.
- Development of program criteria for deferral of nonmajor sources consistent with the discretion provided to States in part 70.
- Application of deferral criteria to individual sources.
- Development of significance levels (for exempting certain information from inclusion on permits application).
- Development and implementation of federally-enforceable restrictions on a source's potential to emit in order to avoid it being considered a major source.

E. Permits application review, including:

- Completeness review of applications.
- Technical analysis of application content.
- Review of compliance plans, schedules, and compliance certifications.

F. General and model permits, including:

- Development.
- Implementation.

G. Development of permit terms and conditions, including:

- Operational flexibility provisions.
- Netting/trading conditions.
- Filling gaps within applicable requirements (e.g., periodic monitoring and testing).
- Appropriate compliance conditions (e.g., inspection and entry, monitoring and reporting).
- Screen/separate "State-only" requirements from the federally-enforceable requirements.

- Development of source-specific permit limitations [e.g., section 112(g) determinations, equivalent SIP emissions limits pursuant to 70.6(a)(1)(iii)].

- Optional shield provisions.

H. Public/EPA participation, including:

- Notices to public, affected States and EPA for issuance, renewal, significant modifications and (if required by State law) for minor modifications (including staff time and publication costs).

- Response to comments received.

- Hearings (as appropriate) for issuance, renewal, significant modifications, and (if required by State law) for minor modifications (including preparation, administration, response, and documentation).

- Transmittal to EPA of necessary documentation for review and response to EPA objection.

- 90-day challenges to permits terms in State court, petitions for EPA objection.

I. Permit revisions, including:

- Development of criteria and procedures for the following different types of permit revisions:

  * Administrative amendments.

  * Minor modifications (fast-track and group processing).

  * Significant modifications.

- Analysis and processing of proposed revisions.

J. Reopenings:

- For cause.

- Resulting from new emissions standards.

K. Activities relating to other sections of the Act which are also needed in order to issue and implement part 70 permits, including:

- Certain section 110 activities, such as:

  * Emissions inventory compilation requirements.

  * Equivalency determinations and case-by-case reasonably available control technology determinations if done as part of the part 70 permitting process.

- Implementation and enforcement of preconstruction permits issued to part 70 sources pursuant to title I of the Act, including:

  * State minor NSR permits issued pursuant to a program approved into the SIP.

  * Prevention of significant deterioration/NSR permits issued pursuant to Parts C and D of title I of the Act.

- Implementation of Section 111 standards through part 70 permits.

- Implementation of the following section 112 requirements through part 70 permits:

  * National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated under section 112(d) according to the timetable specified in section 112(e).

  * The NESHAP promulgated under section 112(f) subsequent to EPA's study of the residual risks to the public health.

  * Section 112(h) design, equipment, work practice, or operational standards.

- Development and implementation of certain section 112 requirements through part 70 permits, including:

  * Section 112(g) program requirements for constructed, reconstructed, and modified major sources.

    * Section 112(i) early reductions.

    * Section 112(j) equivalent MACT determinations.

    * Section 112(l) State air toxics program activities that take place as part of the part 70 permitting process.

    * Section 112(r)(7) risk management plans if the plan is developed as part of the permits process.

L. Compliance and enforcement-related activities to the extent that these activities occur prior to the filing of an administrative or judicial complaint or order. These activities include the following to the extent they are related to the enforcement of a permit, the obligation to obtain a permit, or the permitting regulations:

- Development and administration of enforcement legislation, regulations, and policy and guidance.

- Development of compliance plans and schedules of compliance.

- Compliance and monitoring activities.

    * Review of monitoring reports and compliance certifications.

    * Inspections.

    * Audits.

    * Stack tests conducted/reviewed by the permitting authority.

    * Requests for information either before or after a violation is identified (e.g., requests similar to EPA's section 114 letters).

- Enforcement-related activities.

    * Preparation and issuance of notices, findings, and letters of violation [NOV's, FOV's, LOV's].

    * Development of cases and referrals up until the filing of the complaint or order.

- Excluded are all enforcement/compliance monitoring costs which are incurred after the filing of an administrative or judicial complaint.

M. The portion of the Small Business Assistance Program which provides:

- Counseling to help sources determine and meet their obligations under part 70, including:

  * Applicability.

  * Options for sources to which part 70 applies.

- Outreach/publications on part 70 requirements.

- Direct part 70 permitting assistance.

N. Permit fee program administration, including:

- Fee structure development.

- Fee demonstration.

  * Projection of fee revenues.

  * Projection of program costs if detailed demonstration is required.

- Fee collection and administration.

- Periodic cost accounting.

O. General air program activities to the extent they are also necessary for the issuance and implementation of part 70 permits.

- Emissions and ambient monitoring.

- Modeling and analysis.

- Demonstrations.

- Emissions inventories.

- Administration and technical support (e.g., managerial costs, secretarial/clerical costs, labor indirect costs, copying costs, contracted services, accounting and billing).

- Overhead (e.g., heat, electricity, phone, rent, and janitorial services).

- States will need to develop a rational method based on sound accounting principles for segregating the above costs of the permits program from other costs of the air program. The cost figures and methodology will be reviewed by EPA on a case-by-case basis.

III. FLEXIBILITY IN FEE STRUCTURE DESIGN

A. A State may design its fee structure as it deems appropriate, provided the fee structure raises sufficient revenue to cover all reasonable direct and indirect permits program costs.

B. Provided adequate aggregate revenue is raised, States may:

- Base fees on actual emissions or allowable emissions.

- Differentiate fees based on source categories or type of pollutant.

- Exempt some sources from fee requirements.

- Determine fees on some basis other than emissions.

- Charge annual fees or fees covering some other period of time.

IV. INITIAL PROGRAM APPROVABILITY CRITERIA

A. Elements of State program submittals which relate to permit fees.

- Demonstration that fee revenues in the aggregate will adequately fund the permits program.

- Initial accounting to demonstrate that permit fee revenues required to support the reasonable direct and indirect permits program costs are in fact used to fund permits program costs.

- Statement that the program is adequately funded by permit fees (which is supported by cost estimates for the first 4 years of the permits program).

B. Methods by which a State may demonstrate that its fee schedule is sufficient to fund its title V permits program:

- Demonstration that its fee revenue in the aggregate will meet or exceed the $25/tpy (with CPI adjustment) presumptive minimum amount.

- Detailed fee demonstration.

  * Required if fees in the aggregate are less than the presumptive minimum or if credible evidence is presented raising serious questions during public comment on whether fee schedule is sufficient or information casting doubt on fee adequacy otherwise comes to EPA's attention.

C. Computation of $25/tpy presumptive minimum.

- The emissions inventory against which the $25/tpy is applied is calculated as follows:

  * Calculate emissions inventory using actual emissions (and estimates of actual emissions).

  * From the total emissions of part 70 sources, exclude emissions of carbon monoxide (CO) and other pollutants consistent with the definition of "regulated pollutant (for presumptive fee purposes)."

  * States may:

    - Exclude emissions which exceed 4,000 tpy per pollutant per source.

    - Exclude emissions which are already included in the calculation (i.e., double-counting is not required).

    - Exclude insignificant quantities of emissions not required in a permit application.

  * States have two options with respect to emissions from affected units under section 404 of the Act during 1995 through 1999.

    - If a State <u>excludes</u> emissions from affected units under section 404 from its inventory, fees from those units may <u>not</u> be used to show that the State's fee revenue meets or exceeds the $25/tpy presumptive minimum amount (see paragraph IV.E below).

    - If a State <u>includes</u> emissions from affected units under section 404 in its inventory, it <u>may</u> include non-emissions-based fees from those units in

showing that its fee revenue meets or exceeds the $25/tpy presumptive minimum amount (see paragraph IV.E below.)

- Computation of the presumptive minimum amount is a surrogate for predicting aggregate actual program costs. Once this aggregate cost has been determined, the method used for computing it does not restrict a State's discretion in designing its particular fee structure. States may impose fees in a manner different from the criteria for calculating the presumptive amount (e.g., charging fees for CO emissions and for emissions which exceed 4,000 tpy per pollutant per source).

D. Establishing that fee revenue meets or exceeds the presumptive minimum.

- Fee revenue in the aggregate must be equivalent to $25/tpy (as adjusted by CPI) as applied to the qualifying emissions inventory.

- States have flexibility in fee schedule design as outlined in paragraph III above and are not required to adopt any particular fee schedule.

E. Fees collected from affected units under section 404.

- States may not use emissions-based fees from "Phase I" affected units under section 404 for any purpose related to the approval of their operating permits programs for the period from 1995 through 1999. The EPA interprets the prohibition contained in section 408(c)(4) of the Act as preventing EPA from recognizing the collection of such fees in determining whether a State has met its obligation for adequate program funding. Furthermore, such fees cannot be used to support the direct or indirect costs of the permits program. However, States may, on their own initiative, impose title V emissions-based fees on affected units under section 404 and use such revenues to fund activities beyond those required pursuant to title V.

  * All units initially classified as "Phase I" units are listed in Table I of 40 CFR part 73. In addition, units designated as active substitution units under section 404(b) are considered "Phase I" affected units under section 404.

- States may collect fees which are not emissions based (e.g., application or processing fees) from such units.
- Role of nonemissions-based fees in determining adequacy of aggregate fee revenue.

  * Such fees may be used as part of a detailed fee demonstration (which does not rely on the $25/tpy presumption).

    * Such fees may not be used to establish that aggregate fees meet or exceed the presumptive minimum amount unless the State exercises its discretion to include emissions from affected units under section 404 in the emissions inventory against which the $25/tpy is applied.

F. Fee program accountability.

- Initial accounting (required as part of program submittal) comprised of a description of the mechanisms and procedures for ensuring that fees needed to support the reasonable direct and indirect costs of the program are utilized solely for permits program costs.

- Periodic accounting every 2-3 years to demonstrate that the reasonable direct and indirect costs of the program were covered by fee revenues.

- Earlier accounting or more frequent accountings if EPA determines through its oversight activities that a program's inadequate implementation may be the result of inadequate funding.

G. Governor's statement assuring adequate personnel and funding for permits program.

- Submitted as part of program submittal.

- A statement supported by annual estimates of permits program costs for the first 4 years after program approval and a description of how the State plans to cover those costs.

    * Detailed description of estimated annual costs is not required if the State has relied on the presumptive minimum amount in demonstrating the adequacy of its fee program.

* Detailed description of estimated costs for a 4-year period showing how program activities and resource needs will change during the transition period is required if State proposes to collect fee revenue which is less than the presumptive minimum amount.

- Projection of annual fee revenue for a 4-year period with explanation of how State will handle any temporary shortfall (if projected revenue for any of the 4 years is less than estimated costs).

V. FUTURE ADJUSTMENTS TO FEE SCHEDULE

A. Continuing requirement of fee revenue adequacy.

- Obligates the States to update and adjust their fee schedules periodically if they are not sufficient to fund the reasonable direct and indirect costs of the permits program.

B. Changes in fee structure over time are inevitable and may be required by the following events:

- Results of periodic audits/accountings.

- Revised number of part 70 sources (discovery of new sources, new EPA standards, expiration of the deferral of nonmajor sources).

- Changes in the number of permit revisions.

- Changes in the number of affected units under section 404 (e.g., substitution units).

- CPI-type adjustments.

- Different activities during post-transition period.

NOTICE

The policies set out in this guidance document are intended solely as guidance and do not represent final Agency action and are not ripe for judicial review. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. The EPA officials may decide to follow the guidance provided in this guidance document, or to act at variance with the guidance, based on an analysis of specific circumstances. The EPA also may change this guidance at any time without public notice.

Israels, Ken

From: Donna Peterson <DPeterson@aqmd.gov>
Sent: Wednesday, April 13, 2016 9:27 AM
To: Israels, Ken
Cc: Rios, Gerardo; Barbara Baird; Michael O'Kelly; Teresa Barrera; Amir Dejbakhsh; Mohan Balagopalan
Subject: RE: title V fee related information

Hi Ken:

Thanks again for the additional time to get back to you on this. Please see SCAQMD's responses below in **bold red**:

If you have any questions or need additional information, let me know.

Donna

From: Israels, Ken [mailto:Israels.Ken@epa.gov]
Sent: Monday, April 4, 2016 3:35 AM
To: Donna Peterson <DPeterson@aqmd.gov>
Cc: Rios, Gerardo <Rios.Gerardo@epa.gov>; Barbara Baird <BBaird@aqmd.gov>; Teresa Barrera <tbarrera@aqmd.gov>; Amir Dejbakhsh <adejbakhsh@aqmd.gov>; Mohan Balagopalan <mbalagopalan@aqmd.gov>
Subject: RE: title V fee related information

Hi Donna –

Thanks for your email. Providing us the information described in my email below by April 15 is fine. Please let us know if we can be of any assistance. We appreciate your help on this.

Ken Israels
415-947-4102

From: Donna Peterson [mailto:DPeterson@aqmd.gov]
Sent: Friday, April 01, 2016 7:37 AM
To: Israels, Ken <Israels.Ken@epa.gov>
Cc: Rios, Gerardo <Rios.Gerardo@epa.gov>; Barbara Baird <BBaird@aqmd.gov>; Teresa Barrera <tbarrera@aqmd.gov>; Amir Dejbakhsh <adejbakhsh@aqmd.gov>; Mohan Balagopalan <mbalagopalan@aqmd.gov>
Subject: RE: title V fee related information

Good Morning Ken:

Would it be possible to get an extension of time until Friday, April 15th to provide you with the additional information requested below?

Donna

From: Israels, Ken [mailto:Israels.Ken@epa.gov]
Sent: Tuesday, March 29, 2016 8:59 AM
To: Donna Peterson <DPeterson@aqmd.gov>

Cc: Rios, Gerardo <Rios.Gerardo@epa.gov>
Subject: title V fee related information

Hi Donna –

Good speaking with you this morning and meeting with you last week. As noted during our interview, we appreciate your ability to provide thorough tracking of the revenue and expenses associated with the implementation of the title V operating permit program. After reviewing the spreadsheet provided entitled "Title V Program", we want to clarify our understanding of the accounting for the title V revenue and expenses.

To this end, we want to make sure that we understand:

1) how any shortfall in revenue is covered from one year to the next for those years showing a shortfall in the spreadsheet

SCAQMD expenditure increases are largely attributable to retirement, healthcare, building-related and other overhead increases. Shortfalls are covered by reserves/prior year revenue. It is our typical practice to underestimate the amount of penalties we expect to receive in any given year. The District does not want penalties to be a substantial source of assumed/budgeted revenue. This underestimation can be substantial because there are often large but unanticipated, one-time type penalties obtained in any given year. The receipt of penalties beyond what we budget for has been the primary contributor to our unreserved fund balance. The SCAQMD Governing Board has a policy of maintaining the Unreserved Fund Balance at a minimum of 20% of General Fund revenues. We incorporate this 20% reserve requirement into our Five Year Projection for planning purposes and any use of the reserve typically prompts an analysis of whether immediate and/or longer-term changes to our expenses and revenues may be needed.

and 2) if there is an explanation for the differences in WPC codes (especially codes 50607 and 50774) over time. We understand, generally, based on the narrative you provided with the spreadsheet, that the expenditure increases for FY 12-13, FY 13-14, and FY 14- 15 are attributable to retirement/health care, building related, and other overhead increases.

In February 2012, the District created Work Program Code (WPC) 50607 as a new WPC for Permit Processing of Title V and RECLAIM Facilities. Prior to that we had WPCs for Permit Processing of TV only [WPC 50774] or RECLAIM only [WPC 50518], but not for a combination of the two. Also in 2012, we clarified with staff that WPC 50775 was to be used for TV Administration only. These changes were made as part of an effort to further refine the accuracy of the data and some of the time previously charged to existing codes is now being charged to the new code.

Work Program Code	Description	Comment
50607	RECLAIM & Title V	New –created in February 2012
50774	Title V only	Existing prior to 2012
50775	Title V – Admin	Existing prior to 2012
50518	RECLAIM/Non TV	Existing prior to 2012

Finally, I am attaching for your information an EPA guidance document that may be helpful in addressing our fee-related queries entitled, "Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V", dated August 4, 1993.

We appreciate your taking time during what I'm sure is a busy week to address the above items. If a response can not be prepared until next Tuesday (4/5), we understand. Please feel free to respond to this email or give me a call at the number below if you have any questions or concerns. We appreciate your efforts.

Thanks,

Ken Israels
415-947-4102

WPC	Program Category	Program	Activities/Output	Title V Program Expenditures FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
08770	COMPLIANCE	Title V	Leg Advice: Title V Program/Perm D	-	434	4,827	1,061	-	6,635	8,525	5,628
08772	PERMIT	Title V Permits	Legal Advice: New Src Title V Permit	-	5,541	6,520	11,384	27,931	1,148	1,171	2,096
11770	PERMIT	Title V	Leg Advice: Title V Program/Perm D	-	-	-	-	-	-	-	-
11772	PERMIT	Title V Permits	Legal Advice: New Src Title V Permit	3,519	-	-	-	-	-	-	-
27770	PERMIT	Title V	Dev/Maintain Title V Program	-	-	-	-	-	-	-	-
50607	PERMIT	Title V	Process RECLAIM/Title V Permits	-	-	-	-	2,210,931	6,714,090	7,187,599	7,421,146
50771	COMPLIANCE	Title V Inspections	Title V Compliance/Inspection/Follo	719,580	676,618	724,995	644,761	578,683	463,665	387,352	375,859
50773	DEVELOP RULES	Title V & NSR Rulemaking	Title V Rule Dev/Amend/Impl	-	5,156	852	4,681	-	-	-	-
50774	PERMIT	Title V Permits	Title V Permit Processing	1,594,407	2,991,809	3,706,367	6,020,141	5,339,622	2,183,237	2,015,501	1,903,361
50775	PERMIT	Title III & V Permits/NSR	Title V NSR Permit Processing	195,503	131,805	111,298	140,473	141,325	273,711	308,100	320,606
50377	COMPLIANCE	Inspections/RECLAIM Audi	Audit/Compliance/Assurance	1,181,947	1,619,066	1,682,060	1,637,584	1,605,762	1,585,717	1,587,342	1,687,204
50521	PERMIT	Permit Processing/Expedit	Proc Expedited Permits (301OT)	74,826	86,293	123,230	176,930	164,619	246,619	265,684	277,054
			Total Expenditures	**$ 3,769,782**	**$ 5,516,722**	**$ 6,360,150**	**$ 8,637,017**	**$ 10,068,873**	**$ 11,474,822**	**$ 11,761,274**	**$ 11,992,956**
			Title V Revenue								
			Title V	148,481	161,358	172,387	171,180	160,311	162,815	153,784	154,344
			Annual Renewals	3,447,734	4,059,117	5,300,638	7,688,620	7,811,610	7,412,837	7,481,084	7,121,349
			Permit Processing	1,508,429	1,801,992	2,303,456	2,585,888	3,511,341	2,938,864	2,612,982	2,162,290
			Total Title V Revenue	**$ 5,104,644**	**$ 6,022,467**	**$ 7,776,481**	**$ 10,445,688**	**$ 11,483,262**	**$ 10,514,516**	**$ 10,247,850**	**$ 9,437,983**
			Adjustments to Title V Annual Renewal Revenue								
			Legal/Planning	(128,273)	(147,533)	(228,805)	(346,009)	$ (334,805)	$ (284,352)	$ (282,482)	$ (267,612)
			IM	(126,211)	(144,637)	(180,878)	(276,001)	$ (285,477)	$ (267,627)	$ (253,288)	$ (253,353)
			STA (Science/Tech Adv)	(536,905)	$ (833,553)	$ (814,691)	$ (672,448)	$ (781,749)	$ (1,009,812)	$ (1,089,036)	$ (998,208)
			Adjusted Title V Revenue	**4,313,256**	**4,896,744**	**6,552,107**	**9,151,231**	**10,081,231**	**8,952,725**	**8,623,044**	**7,918,810**
			Title V Surplus/(Deficit)	**$ 543,474**	**$ (619,978)**	**$ 191,957**	**$ 514,214**	**$ 12,358**	**$ (2,522,097)**	**$ (3,138,229)**	**$ (4,074,146)**

addresses commissioner

(a) 53% of RECLAIM facilities are both Title V and RECLAIM; 147 facilities are both Title V and RECLAIM; 278 total RECLAIM facilities
(b) % XPP related to Title V facilities from 12-4-14 email from Mohan Balagopalan

$136M

Expenditures:

- Fully Burdened Costs for:
  Title V related WPCs (in Legal IM, E&C)
  Title V portion of RECLAIM Inspections (WPC 50377 - # TV facilities/# Title V-RECLAIM facilities)
  Title V portion of Expedited Permit Processing (WPC 50521 – Trans Type 15 - % of XPP by Title V facilities/total XPP

Revenue:

IM queries all facilities with Fee #1400 (Title V) and query everything paid by those facilities in the fiscal year.

- Title V "flat fee" (page 301-18) – Title V Facility Fee
  Billed on regular billing cycle, along with annual renewal but on a separate invoice

- Annual Renewal Fee – Facility Permit – regular Schedule A-H

Permit Processing Fees/Title V Permit Application Fees

- Title V Initial Fee (page 301-45) – when application submitted
  Other permit processing fees (e.g. public notice, public hearing)
- Title V Final Fee (page 301-46) – T & M if in excess of

- Title V Renewal Fee (incl T&M) (page 301-47) – every 5 years

Adjustments to Revenue based on Legal review and determination that a portion of these revenues are used to pay for non-Title V allowable costs/recovering fees for activities not within the scope of Title V:

Of the activities supported by Annual Operating Renewal Fees, there are some that should be excluded because they are non-allowable Title V costs. So, we take the % of Title V-related annual renewals to the total Annual Renewals, and exclude that percentage of the revenue.

Surplus/(Deficit):

Any deficit (costs exceeding revenue collected) represents Title V share of ongoing deficit in permit processing.

FY 12-13, 13-14, 14-15 Expenditure Increases:

- Retirement/Health Care
- Building Related
- Other Overhead increases

Appendix F. South Coast AQMD Comments on the Draft Report

South Coast
Air Quality Management District
21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

September 12, 2016

Gerardo C. Rios,
Chief, Permits Office, Air Division (AIR-3)
U.S. Environmental Protection Agency – Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Re: Draft Title V Program Evaluation Report for the South Coast Air Quality Management District

Dear Mr. Rios:

The South Coast Air Quality Management District (SCAQMD) has received the U.S. Environmental Protection Agency's (EPA) August 11, 2016 draft evaluation of its Title V Program. The SCAQMD staff would like to thank EPA for the opportunity to review and comment on EPA's findings to ensure the report accurately reflects SCAQMD's program and its policies. As you know, SCAQMD currently has more than 380 facilities in its Title V universe, and it is committed to working closely and collaboratively with EPA to address any deficiencies identified and improve its Title V program implementation. We are open to any and all improvement suggestions and will work with EPA to ensure that they do not hinder the expeditious processing of Title V permits or increase program implementation cost unnecessarily.

The SCAQMD staff is pleased with EPA's general finding that the SCAQMD implements the Title V program in an effective and efficient manner. We are also appreciative of EPA's recognition of our Title V Compliance program and the effective communications between our permitting, compliance, and legal staff. Although EPA has found that the majority of our Title V permitting activities, such as permit actions, quality assurance practices, streamlining of overlapping conditions, implementation CAM requirements, and actively engaging linguistically communities isolated to be acceptable, EPA has also identified several areas of concern and provided recommendations on how to resolve these deficiencies. We have listed these findings in the attached document and are providing our initial feedback and responses. To minimize any potential administrative disruptions to the program, we suggest that a phased implementation approach is followed in implementing the identified recommendations. This can be part of the work plan required within 90 days of issuance of the Program Evaluation Report. EPA had no comments or recommendations on the effectiveness or the benefits of the Title V program on

the SCAQMD's existing air permitting and compliance program and asked SCAQMD to continue with their current efforts.

As I stated earlier, the SCAQMD staff is committed to working closely with EPA to address your concerns collaboratively. Please contact me if you have any questions or wish to discuss any of our comments or proposals. I can be reached at 909-396-3123 or ltisopulos@aqmd.gov via e-mail.

Sincerely,

Laki Tisopulos, Ph.D., P.E.
Deputy Executive Officer
Engineering and Permitting

TK:AD

Attachment

CC: Wayne Nastri, SCAQMD
Jill Whynot, SCAQMD
Barbara Baird, SCAQMD
Michael O'Kelly, SCAQMD
Amir Dejbakhsh, SCAQMD
Teresa Barrera, SCAQMD
Mohan Balagopalan, SCAQMD

ATTACHMENT

South Coast Air Quality Management District Staff comments on EPA's Draft August 11, 2016 Title V Program Evaluation

September 12, 2016

Section 2.6 – Statement of Basis Documentation

Finding: SCAQMD's Statements of Basis do not consistently describe regulatory and policy issues or document decisions the District has made in the permitting process.

EPA Recommendation: SCAQMD must produce adequate statements of basis/Engineering Evaluations for all Title V permitting actions (initial permits, renewals, and revisions), and should commit to improving the scope and content of these documents, particularly for initial and renewal permits, in accordance with EPA guidance in future permitting actions. We encourage SCAQMD to work in close coordination with EPA to assure such documents meet federal requirements.

Comments:

The SCAQMD Title V permitting program was developed in close coordination with EPA with many written and verbal agreements in order to address the large number of Title V permits that SCAQMD had to issue. As part of these agreements, SCAQMD was allowed to use its detailed Engineering Evaluation in place of Statement of Basis for initial and revision permitting actions, and a streamlined Statement of Basis version for its renewal actions, except for the refinery operations. We also understand EPA's concerns that a more robust Statement of Basis would now be beneficial to both EPA and public when reviewing our permit actions. As such we are willing and committed to work closely with EPA in developing a phased-in approach to include for a Statement of Basis that is acceptable to EPA, while at the same time, not hinder SCAQMD's ability to issue Title V permits in a timely manner.

Section 3.2 - High Level Incorporation by Reference

Finding: Due to SCAQMD's practice of incorporating federal regulations using only a general reference, District permits may lack the detailed monitoring, recordkeeping, and reporting for specific applicable requirements that are adequate to ensure and determine compliance for the permittee, SCAQMD, and the public.

EPA Recommendation: SCAQMD must incorporate, in sufficient detail to be practically enforceable, all federally applicable requirements into its Title V permits. We recommend that the District use Region 9's Permit Review Guidelines and EPA Region 3's Permit Writers' Tips when revising existing permits and when developing new Title V permits. The section called "Incorporating Applicable Requirements" in the Region 3 document, which contains tips on how to translate NSPS and NESHAP standards into Title V permit conditions, is especially useful.

Comments:

The SCAQMD's Title V permitting program was developed in close coordination with EPA. EPA had previously agreed with SCAQMD's approach to only include emission limits as required by NSPS or NESHAPs on the Title V permits because many of the federal requirements were duplicative of the SCAQMD rules or permit conditions. Although we agree that including all applicable requirements would be helpful in instances where the local rules are deficient, it will negatively affect the timely issuance of the permits and will substantially increase the size of the permit. For this reason, we are requesting that EPA assist SCAQMD by providing training programs and work with SCAQMD staff in identifying specific areas where SCAQMD rules or permits do not match the current and future NSPS and NESHAP regulations.

Section 4.1 – Permit Availability

Finding: SCAQMD provides public notices and other meaningful information of its draft and final Title V permitting actions on its website. However, aside from those permits up for public review, SCAQMD does not otherwise provide the public with online access to the current final version of its Title V permits.

EPA Recommendation: We recommend that the District continue to provide information through the various approaches currently used. We also recommend that the District provide the public with continuous access (i.e., not just during public comment periods) to the final issued permit of all Title V sources via its website.

Comments:

SCAQMD is currently working on this issue and should have this information available online by end of the second quarter in 2017.

Section 4.4 – Community Outreach

Finding – Southern California contains a significant number of linguistically isolated communities for which SCAQMD consistently provides translation services.

EPA Recommendation: SCAQMD should continue to actively engage communities based on their current process.

Comments:

SCAQMD appreciates EPA's acknowledgment that SCAQMD is adequately engaging linguistically isolated communities. However, to maintain and improve this process, SCAQMD during the last quarterly meeting with EPA, requested additional training from EPA on its available programs to further assist the SCAQMD in its outreach programs to linguistically isolated communities.

Section 4.5 – EPA Review

Finding: When public comments are received, certain practices by SCAQMD do not always ensure that the EPA and the public have sufficient time and information to determine whether an objection to a Title V permit is warranted.

EPA Recommendation: We recommend that SCAQMD revise its practices such that for permit actions in which public comments are received, SCAQMD 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. To facilitate timely issuance of permits, EPA Region 9 and SCAQMD should coordinate these review periods so that Region 9 can expedite its review when feasible.

Comments:

We typically do concurrent notifications to the public (30 days review period) and to EPA (45 days review period) as part of a streamlining effort to issue Title V permits in a timely manner. We agree with EPA that **ONLY** in the event public comments are received, the EPA 45 day review period should commence after we have forwarded the public comments and our responses to such comments to EPA. SCAQMD staff have already initiated and changed the language in the review request submittals to EPA to address this concern.

Section 5.2 – Reclassification as a Synthetic Minor Source

Findings: District Rule 3008 allows sources to voluntarily limit their potential to emit in order to avoid the requirement to obtain a Title V permit. The District has since discontinued the use of Rule 3008 and now uses a list of guidelines to determine if a Title V major source can be reclassified as a synthetic minor source.

EPA Recommendation: The District should ensure that its new guidelines regarding limiting PTE are clearly and consistently applied throughout its jurisdiction. We recommend consolidating these new guidelines into a written policy. In addition, the District should consider issuing a single document that list requirements for a source to demonstrate compliance with facility-wide emission limits, instead of individual equipment based emission limits. Such an approach may be easier to enforce for compliance staff and easier to understand for a permitted synthetic minor source.

Comments:

We disagree with EPA's statement that SCAQMD has discontinued the use of Rule 3008 to allow facilities to opt out of Title V. Facilities can use either Rule 3008 or follow the second set of guidelines that SCAQMD has developed to be reclassified as a synthetic minor source. However, we agree with EPA's recommendations that a written a policy to clearly state these guidelines will be helpful for our permitting staff.

Also, we do issue a single document, in the form of a letter, which notifies the facility of our decision to allow them to opt out of Title V program. In the letter we specify that if the facility's annual emission limits exceed their facility-wide emission threshold limits or become subject to an applicable NSPS or a

NESHSAP that requires submittal of a Title V permit, the facility loses their exemption and must refile an application for a Title V permit. When we convert the Title V permit back to "individual permits", we include a facility-wide condition on each permit as a reminder to the facility, as well as our compliance staff, to keep records to show continual compliance with the emissions cap in order to maintain their Minor Source designation. We have found that placing such a condition on individual permits, rather than in a separate letter, is actually easier to track for compliance purposes.

Section 7.2 – Title V Fee Sufficiency

Finding: SCAQMD tracks Title V program expenses and revenue. However, additional funds have been needed for the past three years to ensure that program expenses are adequately covered.

Recommendation: First, EPA commends SCAQMD for its existing accounting practices that provide sufficient information regarding expenses and revenue associated with Title V permits. Second, EPA strongly encourages SCAQMD to prepare a plan to take measures over time, such as raising permit fees and reducing expenses, to minimize continued use of reserves to cover program funding deficits. Finally, EPA believes that SCAQMD must clarify its use of penalties as a source of revenue for Title V implementation as described in the discussion above. Since these funds are to be used solely as Title V revenue as opposed to other purposes, SCAQMD must identify whether the penalties used to cover any Title V program revenue shortfalls are solely from Title V facilities' noncompliance or if the penalties are from a broader set of facilities.

Comments:

Upon becoming aware that we could count Title V penalty revenue, we identified sufficient penalties received from Title V facilities to cover the shortfalls for each of the three fiscal years (FY 12-13, FY 13-14 and FY 14-15). This revised methodology provides a more accurate analysis of the Title V program's revenues and expenditures. We provided this information to EPA staff in August 2016, and expect that based on this additional information and ongoing discussions with EPA, the Finding, Discussion and Recommendation for 7.2 will be modified in the Final Report.

With respect to any concern that the continued use of reserves/prior year revenue is not sustainable, we acknowledge that we inherently have run a General Fund budget deficit, purposefully drawing on reserves as part of the Five Year Forecast included in the annual budget document which is adopted by SCAQMD's Governing Board. The SCAQMD Governing Board has adopted a Fund Balance Policy which requires that the Unreserved Fund Balance in the General Fund should be maintained at a minimum of 20% of revenues. Government Finance Officers Association (GFOA) Recommended Best Practices prescribes a minimum 17% reserve amount plus an additional amount based on the organization's reliance on revenue over which it has no control. The 20% reserve amount is derived from the minimum 17% plus an additional 3% to account for SCAQMD's reliance on state subvention ($4M), U.S. EPA Section 103/105 grants ($5M) and one-time penalties and settlements ($5M).

In order to more fully recover the cost of all SCAQMD programs, we have raised fees by 77% cumulatively since FY 05-06. Additionally, we continue exploring possible expenditure reductions wherever possible.

We agree that reliance on penalties and settlements to balance the budget and Title V program may not be preferable to fee revenue. However, it is important to note that annual penalties and settlements have been relatively consistent over the last 10 year period. The average annual penalties collected was $10.5 million, with a range of $4.9 million - $18.0 million.

Appendix G. EPA Response to South Coast AQMD Comments

EPA Region 9 Responses to SCAQMD Comments on the Draft Title V Program Evaluation Report September 30, 2016

Thank you for providing comments on the draft title V program evaluation report.[1] EPA has reviewed SCAQMD's comments and provides the following responses.

Finding 2.6 – Statement of Basis Documentation

District Comment: The SCAQMD Title V permitting program was developed in close coordination with EPA with many written and verbal agreements in order to address the large number of Title V permits that SCAQMD had to issue. As part of these agreements, SCAQMD was allowed to use its detailed Engineering Evaluation in place of Statement of Basis for initial and revision permitting actions, and a streamlined Statement of Basis version for its renewal actions, except for the refinery operations. We also understand EPA's concerns that a more robust Statement of Basis would now be beneficial to both EPA and public when reviewing our permit actions. As such we are willing and committed to work closely with EPA in developing a phased-in approach to include for a Statement of Basis that is acceptable to EPA, while at the same time, not hinder SCAQMD's ability to issue Title V permits in a timely manner.

EPA Response: Thank you for your comment. We look forward to working closely with SCAQMD staff in developing a phased-in approach to address this finding.

Finding 3.2 – High Level Incorporation by Reference

District Comment: The SCAQMD's Title V permitting program was developed in close coordination with EPA. EPA had previously agreed with SCAQMD's approach to only include emission limits as required by NSPS or NESHAPs on the Title V permits because many of the federal requirements were duplicative of the SCAQMD rules or permit conditions. Although we agree that including all applicable requirements would be helpful in instances where the local rules are deficient, it will negatively affect the timely issuance of the permits and will substantially increase the size of the permit. For this reason, we are requesting that EPA assist SCAQMD by providing training programs and work with SCAQMD staff in identifying specific areas where SCAQMD rules or permits do not match the current and future NSPS and NESHAP regulations.

EPA Response: Thank you for your comment. To clarify, in some instances, SCAQMD may not need to add additional conditions to its permits, but can instead discuss the overlapping requirements in a statement of basis and add a citation to the NSPS or NESHAP regulation to the existing permit conditions. The EPA commits to providing SCAQMD with training on incorporating NSPS and NESHAPs into title V permits and working with SCAQMD staff in helping to identify those SCAQMD rules or permits that do not match the NSPS and NESHAP regulations.

Finding 4.1 – Permit Availability

[1] The District's comments, along with EPA's responses to comments, are included as Appendix F and G, respectively, in the final report.

District Comment: SCAQMD is currently working on this issue and should have this information available online by end of the second quarter in 2017.

EPA Response: Thank you for your comment. EPA understands that SCAQMD is currently working to address this issue. Until the information discussed in our recommendation is made available online, the District should ensure that its website informs the public that this information may be available by contacting the District by other means. We look forward to reviewing the information online by 2017, as SCAQMD has stated.

Finding 4.4 – Community Outreach

District Comment: SCAQMD appreciates EPA's acknowledgment that SCAQMD is adequately engaging linguistically isolated communities. However, to maintain and improve this process, SCAQMD during the last quarterly meeting with EPA, requested additional training from EPA on its available programs to further assist the SCAQMD in its outreach programs to linguistically isolated communities.

EPA Response: EPA will work with SCAQMD to explore training opportunities, including a possible peer-to-peer exchange with other districts and EPA staff, and will provide guidance to further assist the District in its outreach programs to linguistically isolated communities.

Finding 4.5 – EPA Review

District Comment: We typically do concurrent notifications to the public (30 days review period) and to EPA (45 days review period) as part of a streamlining effort to issue Title V permits in a timely manner. We agree with EPA that **ONLY** in the event public comments are received, the EPA 45 day review period should commence after we have forwarded the public comments and our responses to such comments to EPA. SCAQMD staff have already initiated and changed the language in the review request submittals to EPA to address this concern.

EPA Response: Thank you for your comment. We look forward to working closely with SCAQMD staff in developing a phased-in approach to address this finding.

Finding 5.2 – Reclassification as a Synthetic Minor Source

District Comment: We disagree with EPA's statement that SCAQMD has discontinued the use of Rule 3008 to allow facilities to opt out of Title V. Facilities can use either Rule 3008 or follow the second set of guidelines that SCAQMD has developed to be reclassified as a synthetic minor source. However, we agree with EPA's recommendations that a written a policy to clearly state these guidelines will be helpful for our permitting staff.

Also, we do issue a single document, in the form of a letter, which notifies the facility of our decision to allow them to opt out of Title V program. In the letter we specify that if the facility's annual emission limits exceed their facility-wide emission threshold limits or become subject to an applicable NSPS or a NESHAP that requires submittal of a Title V permit, the facility loses their exemption and must refile an application for a Title V permit. When we convert the Title V permit back to "individual permits", we include a facility-wide condition on each permit as a reminder to the facility, as well as our compliance staff, to keep records to show continual compliance with the emissions cap in order to maintain their

Minor Source designation. We have found that placing such a condition on individual permits, rather than in a separate letter, is actually easier to track to compliance purposes.

EPA Response: Thank you for elaborating on the Districts approach to permitting synthetic minor sources and meeting the requirements for synthetic minor permits. The explanation was helpful in understanding the Districts process because it was difficult during the program evaluation for EPA to understand, since we could not get a written copy of the entire process. We look forward to working with the District to develop written policies for issuing synthetic minor source permits to Title V sources and to assure synthetic minor permits conform with EPA guidance.

Finding 7.2 – Title V Fee Sufficiency

District Comment: Upon becoming aware that we could count Title V penalty revenue, we identified sufficient penalties received from Title V facilities to cover the shortfalls for each of the three fiscal years (FY 12-13, FY 13-14 and FY 14-15). This revised methodology provides a more accurate analysis of the Title V program's revenues and expenditures. We provided this information to EPA staff in August 2016, and expect that based on this additional information and ongoing discussions with EPA, the Finding, Discussion and Recommendation for 7.2 will be modified in the Final Report.

With respect to any concern that the continued use of reserves/prior year revenue is not sustainable, we acknowledge that we inherently have run a General Fund budget deficit, purposefully drawing on reserves as part of the Five Year Forecast included in the annual budget document which is adopted by SCAQMD's Governing Board. The SCAQMD Governing Board has adopted a Fund Balance Policy which requires that the Unreserved Fund Balance in the General Fund should be maintained at a minimum of 20% of revenues. Government Finance Officers Association (GFOA) Recommended Best Practices prescribes a minimum of 17% reserve amount plus an additional amount based on the organization's reliance on revenue over which it has no control. The 20% reserve amount is derived from the minimum 17% plus an additional 3% to account for SCAQMD's reliance on state subvention ($4M), U.S. EPA Section 103/105 grants ($5M) and one-time penalties and settlements ($5M).

In order to more fully recover the cost of all SCAQMD programs, we have raised fees by 77% cumulatively since FY 05-06. Additionally, we continue exploring possible expenditure reductions wherever possible.

We agree that reliance on penalties and settlements to balance the budget and Title V program may not be preferable to fee revenue. However, it is important to note that annual penalties and settlements have been relatively consistent over the last 10 year period. The average annual penalties collected was $10.5 million, with a range of $4.9 million - $18.0 million.

EPA Response: First, EPA acknowledges SCAQMD's title V fee increase over the past decade as well as continuing efforts to reduce program expenditures. In preparing the final revision of our finding on this matter, EPA notes that we committed to update the title V fee guidance during federal fiscal year 2017 in response to EPA's Office of Inspector General report, "Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues".[2]

[2] See 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.

In light of SCAQMD's comments and the title V fee guidance review currently underway, Region 9 has revised the discussion and recommendation associated with this finding to reflect that we are committed to working with SCAQMD to prepare a plan to transition to allowable sources of revenue to address title V fee revenue shortfalls once our title V fee guidance is finalized.