Bay Area Air Quality Management District
Title V Operating Permit Program Evaluation

Final Report

January 11, 2024

Conducted by the

U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
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Acknowledgments

The EPA Region 9 acknowledges the cooperation of the staff and management of the Bay Area Air Quality Management District (BAAQMD). We appreciate their willingness to respond to information requests and share their experiences regarding the implementation of the BAAQMD's title V program under the Clean Air Act.

Glossary of Acronyms and Abbreviations

AB	Assembly Bill
Act	Clean Air Act [42 USC Section 7401 et seq.]
ATC	Authority to Construct
BAAQMD	Bay Area Air Quality Management District
BACT	Best Available Control Technology
BAP	Business Assistance Program
CAA	Clean Air Act [42 USC Section 7401 et seq.]
CAM	Compliance Assurance Monitoring
CARB	California Air Resources Board
CFR	Code of Federal Regulations
District	Bay Area Air Quality Management District
EPA	U.S. Environmental Protection Agency
EPS	Electronic Permit System
FR	Federal Register
HAP	hazardous air pollutants
NESHAP	National Emission Standards for Hazardous Air Pollutants, 40 CFR Parts 61 & 63
NOV	Notice of Violation
NSPS	New Source Performance Standards, 40 CFR Part 60
NSR	New Source Review
OIG	EPA Office of Inspector General
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
PTO	Permit to Operate
RACT	Reasonably Achievable Control Technology
Region	U.S. Environmental Protection Agency Region 9
RTC	Response to Comments document
SIC	Standard Industrial Classification
SIP	State Implementation Plan
Team	EPA Region 9 Program Evaluation Team
We	U.S. Environmental Protection Agency

Executive Summary

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

The EPA's Region 9 (the "Region") oversees 47 air permitting authorities with title V programs in the Pacific Southwest. Of these, 43 are state or local authorities approved pursuant to title 40 of the Code of Federal Regulations (CFR) part 70 (35 in California, three in Nevada, four in Arizona, and one in Hawaii), referred to as "Part 70" programs. The terms "title V" and "Part 70" are used interchangeably in this report. The Region also oversees a delegated title V permitting program in Navajo Nation under 40 CFR part 71 and title V programs in Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands under 40 CFR part 69, referred to, respectively, as "Part 71" and "Part 69" programs. Because of the significant number of permitting authorities, the Region 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 covers at least 85% of the title V sources within the Region 9 jurisdiction.

The Region initially conducted a title V program evaluation of the Bay Area Air Quality Management District (BAAQMD or "District") in 2009 ("2009 Evaluation").[1] This is the second title V program evaluation the EPA has conducted for the BAAQMD. The EPA Region 9 program evaluation team ("Team") for this evaluation consisted of the following EPA personnel: Meredith Bauer, Air and Radiation Division Assistant Director; Gerardo Rios, Manager of the Air Permits Section; Anna Mebust, Acting Manager of the Air Permits Section; Noah Smith, Attorney Advisor; Ken Israels, Program Evaluation Advisor; Amber Batchelder, Program Evaluation Coordinator; Manny Aquitania, BAAQMD Oversight Team; Shaheerah Kelly, BAAQMD Oversight Team; Lisa Beckham, Program Evaluation Team Member; Tina Su, Program Evaluation Team Member; Po-Chieh Ting, Program Evaluation Team Member; Nidia Trejo, Program Evaluation Team Member; and Catherine Valladolid, Program Evaluation Team Member.

The program evaluation was conducted in four stages. During the first stage, the Region sent the BAAQMD a questionnaire focusing on title V program implementation in preparation for the interviews (see Appendix B). During the second stage, the Team conducted an internal review of requested BAAQMD permit files. The third stage of the program evaluation was a hybrid site visit, which consisted of Region 9 representatives visiting the BAAQMD offices in San Francisco and Richmond, California to conduct interviews of the BAAQMD staff and managers. Because this was a hybrid site visit, some of the interviews were conducted virtually through video conferencing while others were conducted in-

[1] Bay Area Air Quality Management District; Title V Operating Permit Program Evaluation, dated September 29, 2009. See https://www.epa.gov/sites/default/files/2015-07/documents/bayarea-final-report9-29-09.pdf.

person. The site visit took place February 27 – March 2, 2023. Finally, the fourth stage involved follow-up and clarification of issues for completion of the draft report. We recognize that the District has experienced several changes in the last few years: leadership changes, working through a pandemic, and several retirements of seasoned staff. The Region's 2023 evaluation of the BAAQMD's implementation of the Part 70 program concludes that the BAAQMD's title V program issues permits that are generally consistent with the Part 70 program, but the program is under-resourced, and permits are not issued in a timely manner.

Overall, the District's title V permits generally contain sufficient monitoring, recordkeeping, and reporting requirements to determine compliance with emissions limits. Permit engineers understand the importance of documenting their decisions in the support document that explains the legal and factual basis for permit conditions (referred to as the "statement of basis"). Also, the District's Compliance and Enforcement Division staff generally review all title V deviation, annual, and semiannual reports submitted by Part 70 sources. However, the District lacks sufficient resources to implement an effective program. We are concerned the District's approach to administering the program could impede the public's right to enforce the applicable requirements that should be incorporated into the title V permit.

The major critical findings from our report are listed below in priority order. Higher priority findings generally fall into one or more of the following categories: (1) may have a greater impact on the public; (2) are over-arching programmatic issues; and/or (3) were also identified during the 2009 Evaluation.

1. The District does not process title V actions in a timely manner, impeding the public's right to enforce all applicable requirements. (Finding 5.1)

2. The District's Engineering Division faces staffing challenges, resulting in several issues including a permitting backlog of over 150 overdue open applications. (Finding 7.6)

3. The District's title V permits generally incorporate all applicable requirements. However, requirements that are only listed in Table IV (Source-Specific Applicable Requirements) of the title V permit and not in permit conditions may not be enforceable as a practical matter. (Finding 2.1)

4. Certain BAAQMD title V permits contain permit shield language that may unnecessarily limit the District's and EPA's authority to initiate an enforcement action for a source that violates an applicable requirement. (Finding 2.2)

5. The District does not consistently evaluate the potential emissions from sources without title V permits to determine if they are major sources, which could result in sources improperly avoiding title V, major NSR, and other requirements. (Finding 5.3)

6. While the District tracks title V program expenses and revenue and those funds are spent solely to support the title V program, it is unclear whether these fees are sufficient to fully administer

a successful program given the large permitting backlog and resource issues. (Finding 7.2)

7. The District is generally transitioning toward a more proactive community engagement approach but has not incorporated this approach into its title V program. (Finding 4.1)

8. The BAAQMD tracks title V permit data in a remotely hosted legacy system that is being phased out, negatively affecting permit data retrievability and representing a risk to retention of permitting data. (Finding 8.3)

9. Communication between the Engineering Division and Compliance and Enforcement Division is inconsistent, which may impede the resolution of complex compliance issues at facilities. (Finding 7.3)

Some of our findings that reflect the District's strengths include:

1. The BAAQMD has improved its statements of basis over time, and generally produces detailed statements of basis in accordance with EPA guidance. (Finding 2.4)

2. The BAAQMD usually includes a detailed CAM analysis in their statements of basis that clearly documents the BAAQMD's determination and explains the applicable monitoring requirements. (Finding 3.1)

3. The District's permit record typically includes sufficient information used to inform permitting decisions. (Finding 8.1)

4. The BAAQMD maintains a detailed public website and uses e-noticing methods to meet the public noticing requirements of title V. (Finding 4.2)

5. The District's Compliance and Enforcement Division reviews nearly all title V deviation reports, annual compliance certifications, and semiannual monitoring reports submitted by Part 70 sources and uses the deviation reports to identify compliance issues. (Finding 6.1)

Our report provides a full set of findings (including those listed above), and each finding includes recommendations that should be considered in addressing the findings. As part of the program evaluation process, the BAAQMD has been given an opportunity to review these findings and consider our recommendations.

As part of the program evaluation process, the BAAQMD had an opportunity to review these findings and consider our recommendations on August 28, 2023, when we emailed an electronic copy of the draft report to the BAAQMD for comment. We received the BAAQMD's response and comments on October 13, 2023 (see Appendix K). Based on the comments received from the BAAQMD, the EPA made certain changes in the final report. A copy of the Response to Comments and discussion of changes can be found in Appendix L.

In addition, our evaluation considered whether issues found during our 2009 Evaluation have since been addressed. For example, as discussed in Findings 2.9, 2.11, 2.12, and 3.1, the District has improved its practice of documenting support facility tests, compliance assurance monitoring (CAM) requirements, and streamlining (when applicable) in statements of basis. Additionally, the District's permits clearly document which conditions are federally enforceable. However, as discussed in Findings 2.2, 5.1, and 5.4, the District has not fully addressed issues related to restrictive language in permit shields, consistently processing title V actions in a timely manner, and consistently providing the public and the EPA an opportunity to review and comment on synthetic minor permit actions.

We recommend the District review its procedures to identify specific process delays and resource needs within the District's title V program. To better communicate our recommendations and work together on the recommended improvements, we request an initial kick-off meeting within 90 days of the BAAQMD's receipt of the final report to discuss developing a workplan. A workplan typically includes specific goals and milestones that can be used to demonstrate progress. We commit to meet with the BAAQMD regularly to discuss progress until both the BAAQMD and the EPA mutually agree the workplan items are sufficiently complete. The EPA intends to use the workplan and follow-up meetings to assess whether the District is taking actions to ensure adequate administration of the title V program.

1. Introduction

Background

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

After reviewing several selected state and local air pollution control agencies, the OIG issued a report on the progress of title V permit issuance by the EPA and states.[2] In the report, the OIG concluded that (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 engineer site visits to facilities contributed to the progress that agencies made in issuing title V operating permits.

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

On October 20, 2014, the OIG issued a report, "Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues," that recommended, in part, that the EPA: establish a fee oversight strategy to ensure consistent and timely actions to identify and address violations of title 40 of the Code of Federal Regulations (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.[3]

The Region oversees 47 air permitting authorities with title V programs in the Pacific Southwest. Of these, 43 are state or local authorities approved pursuant to 40 CFR part 70 (35 in California, three in Nevada, four in Arizona, and one in Hawaii), referred to as "Part 70" programs. The terms "title V' and "Part 70" are used interchangeably in this report. The Region also oversees a delegated title V permitting program in Navajo Nation under 40 CFR part 71 and title V programs in Guam, American

[2] Report No. 2002-P-00008, Office of Inspector General Evaluation Report, "EPA and State Progress In Issuing title V Permits", dated March 29, 2002. See https://www.epa.gov/sites/production/files/2015-12/documents/titlev.pdf.
[3] Report No. 15-P-0006, Office of Inspector General Evaluation Report, "Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues", dated October 20, 2014. See https://www.epa.gov/sites/production/files/2015-09/documents/20141020-15-p-0006.pdf.

Samoa, and the Commonwealth of the Northern Mariana Islands under 40 CFR part 69, referred to, respectively, as “Part 71” and “Part 69” programs. Because of the significant number of permitting authorities, the Region 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 covers at least 85% of the title V sources within the Region 9 jurisdiction.

Title V Program Evaluation at the Bay Area Air Quality Management District

This is the second title V program evaluation the EPA has conducted for the BAAQMD. The first title V program evaluation was conducted in 2009. Thus, this evaluation is a follow-up to the BAAQMD’s 2009 Evaluation. The EPA Region 9 program evaluation team (“Team”) for this evaluation consisted of the following EPA personnel: Meredith Bauer, Air and Radiation Division Assistant Director; Gerardo Rios, Manager of the Air Permits Section; Anna Mebust, Acting Manager of the Air Permits Section; Noah Smith, Attorney Advisor; Ken Israels, Program Evaluation Advisor; Amber Batchelder, Program Evaluation Coordinator; Manny Aquitania, BAAQMD Oversight Team; Shaheerah Kelly, BAAQMD Oversight Team; Lisa Beckham, Program Evaluation Team Member; Tina Su, Program Evaluation Team Member; Po-Chieh Ting, Program Evaluation Team Member; Nidia Trejo, Program Evaluation Team Member; and Catherine Valladolid, Program Evaluation Team Member.

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

During the second stage of the program evaluation, the Region conducted an internal review of requested BAAQMD title V permit files. The BAAQMD submits title V permits to the Region in accordance with its EPA-approved title V program and the Part 70 regulations.

The third stage of the program evaluation was a hybrid site visit, which consisted of Region 9 representatives visiting the BAAQMD offices in San Francisco and Richmond, California to conduct interviews of the BAAQMD staff and managers in person. Because this was a hybrid site visit, some of the interviews were conducted virtually through video conferencing while others were conducted in-person. The purpose of the interviews was to confirm the responses in the completed questionnaire and to ask clarifying questions. The site visit took place February 27 – March 2, 2023.

The fourth stage of the program evaluation was follow-up and clarification of issues for completion of the draft report. The Region compiled and summarized interview notes and asked follow-up questions to clarify the Region's understanding of various aspects of the BAAQMD's title V program.

Description of the BAAQMD

The BAAQMD's mission is to "protect and improve public health, air quality, and the global climate." The BAAQMD is currently organized into ten departments: (1) Administration, (2) Communications, (3) Community Engagement, (4) Compliance and Enforcement, (5) Engineering, (6) Information Services, (7) Legal, (8) Planning and Research, (9) Strategic Incentives, and (10) Technical Services.[4] The BAAQMD is further organized into several divisions. Stationary source operating permits, including title V permits, are issued by the Engineering Division. Compliance and enforcement activities, such as facility inspections and preparing enforcement cases are handled by the Compliance and Enforcement Division. Source testing is conducted by the Meteorology and Measurements Division. The BAAQMD's headquarters office is located in San Francisco, California.

The first meeting of the Air District's Board of Directors, comprised of local officials, occurred in November of 1955.[5] Currently, the Air District's Board of Directors is made up of 24 locally elected representatives from nine Bay Area counties. Each county's population determines the number of representatives on the Board, as follows:

- Marin and Napa: 1 representative each,
- Solano and Sonoma: 2 representatives each,
- San Francisco and San Mateo: 3 representatives each,
- Alameda, Contra Costa, and Santa Clara: 4 representatives each.[6]

The BAAQMD recently had several experienced staff retire and selected a new Air Pollution Control Officer.

The EPA granted the BAAQMD's title V program interim approval effective July 24, 1995 (see 60 Federal Register (FR) 32603 and 60 FR 32606, July 23, 1995), and full approval effective November 30, 2001 (see 66 FR 63503, December 7, 2001). The EPA also later granted approval of program revisions that were effective on January 1, 2004.[7] In 2013 and 2017, the District submitted additional updates to its title V program, for EPA approval, that the EPA is currently processing.

The Part 70 program generally requires that a permitting authority take final action within 18 months after receipt of a complete permit application. Additionally, a permitting authority must take action on an application for a minor modification within 90 days of receipt of a complete application (or 15 days after the EPA's 45-day review period, whichever is later) and the permitting authority has 60 days to

[4] See https://www.baaqmd.gov/about-the-air-district/departments.
[5] See https://www.baaqmd.gov/about-the-air-district/history-of-air-district.
[6] See https://www.baaqmd.gov/about-the-air-district/board-of-directors.
[7] See Appendix A, 40 CFR part 70, and 68 FR 65637 (November 21, 2003).

act on requests for administrative permit amendments.[8] The BAAQMD's local rules regarding title V permit issuance contain the same or more stringent timeframes as the Part 70 program.[9]

According to the District's response to our questionnaire, there are 82 title V sources in the BAAQMD jurisdiction. Unlike our 2009 Evaluation where we found that the District generally has sufficient permitting resources, the District does not currently have sufficient permitting resources and is unable to process title V permit applications within the timeframes required by regulation, resulting in a title V permit application backlog.[10]

BAAQMD's Approach to the Title V Program

Consistent with the other permitting authorities in California, when the EPA approved the BAAQMD's title V operating permit program, the District had already been implementing an operating permit program locally for many years. As a result, the title V program was implemented as an overlay to the District's local permitting program. Each Authority to Construct (ATC) permit is issued prior to the construction of the emissions unit(s) and typically contains conditions required for the construction and initial operation. The ATC permit is then converted to a Permit to Operate (PTO) after construction is completed and before operation of the emissions unit has commenced. During the conversion from ATC to PTO, certain ATC permit conditions are not retained in the PTO if the ATC conditions are determined to be obsolete or irrelevant because they were construction related. Furthermore, because these operating permits are linked to fee payment and renewed annually, new permit conditions can be added or revised each year as applicable. However, these local PTOs do not meet all the requirements for an operating permit required by title V of the CAA.

The BAAQMD's title V permits generally include all the applicable requirements from District rules and federal requirements. The permits also include title V program-specific conditions such as semi-annual monitoring, annual compliance certifications, deviation reporting, and additional monitoring to assure compliance. For New Source Review (NSR) purposes (i.e. preconstruction permitting), the District generally issues an ATC, which is converted to a PTO after construction, so title V sources typically have two sets of operating permits (PTO and title V permit) with overlapping requirements.

When a permit modification is needed, the applicant generally submits both an ATC application and a title V application. The District has a policy titled Simultaneous Drafting of NSR Permit Evaluation and Title V Statement of Basis for minor permit modifications, which requires the permit engineer to include the title V statement of basis with the NSR permit evaluation. The NSR permit is usually issued first and the title V modification permit is generally incorporated into a subsequent title V permit action (e.g., renewal or another title V permit revision) (see Appendix C). The District has a procedure titled Grouping Title V Revision Applications for Combined Issuance on an Annual Basis. The procedure requires permit engineers to combine all outstanding title V revision applications for an individual source into one permit action. This process is triggered on September 1st of each year and the combined title V permit revision must be issued within 6 months (see Appendix C).

[8] See 40 CFR 70.7(a)(2) and 70.7(e)(2)(iv).
[9] See the BAAQMD Regulation 2 Rule 6.
[10] See Finding 5.1 of this report for more discussion on the District's title V backlog.

During our site visit, we learned that the BAAQMD has experienced many changes in the last few years, including leadership changes, working through a pandemic, and several retirements of seasoned staff. We acknowledge that the BAAQMD has experienced and is still experiencing many changes; we are conducting our evaluation based on what we learned, and we hope to assist the District in its title V program implementation going forward.

Sections 2 through 8 of this report contain the EPA's findings regarding implementation of the title V permit program by the BAAQMD.

The EPA's Findings and Recommendations

The following sections include a brief introduction, and a series of findings, discussions, and recommendations. The findings are grouped in the order of the program areas as they appear in the Title V Questionnaire.

The findings and recommendations in this report are based on the District's responses to the Title V Questionnaire, the EPA's internal file reviews, interviews conducted during the February 27 – March 2, 2023 site visit,[11] and follow-up emails subsequent to the site visit.

[11] Due to scheduling conflicts, the EPA rescheduled one interview after the site visit on March 3, 2023.

2. Permit Preparation and Content

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

2.1 **Finding:** The District's title V permits generally incorporate all applicable requirements. However, requirements that are only listed in Table IV (Source-Specific Applicable Requirements) of the title V permit and not in permit conditions may not be enforceable as a practical matter.

Discussion: A primary objective of the title V program is to provide each major source with a single permit that describes how a source ensures compliance with all applicable CAA requirements. To accomplish this objective, permitting authorities must incorporate applicable requirements in sufficient detail such that the public, facility owners and operators, and regulating agencies can clearly understand which requirements apply to the source. These requirements include emissions limits, operating limits, work practice standards, and monitoring, recordkeeping, and reporting provisions that must be enforceable as a practical matter.

During our file review, we found that the BAAQMD's title V permits do not consistently incorporate all applicable requirements in a manner that is clear and enforceable. The BAAQMD's title V permits list applicable requirements in Section IV (Source-Specific Applicable Requirements) by tabulating applicable SIP-approved rules, federal regulations, and NSR permit conditions in Table IV with a short title or description of each requirement. However, some applicable requirements are not included in Section VI (Permit Conditions) of the title V permits, which can create confusion about what requirements the source must comply with. For example, during our file review we found that some permits identify 40 CFR part 63, subpart ZZZZ as an applicable requirement in Table IV. However, the maintenance requirements from that subpart (e.g., 40 CFR 63.6603(a)) are not expressly included in Section VI. EPA's "White Paper Number 2 for Improved Implementation of The Part 70 Operating Permit Program" provides guidance for including a sufficient level of detail when using citations, cross references, and incorporations by reference.[12]

During our interviews, we also found that District staff were concerned about whether some facilities had followed their schedule of compliance, which is incorporated into Section V

[12] See https://www.epa.gov/title-v-operating-permits/white-paper-number-2-improved-implementation-part-70-operating-permits.

(Schedule of Compliance) of a BAAQMD title V permit but generally not into any source-specific applicable requirement in Section IV or any permit condition in Section VI of a title V permit.

Recommendation: The BAAQMD should continue identifying all applicable requirements in its title V permits; however, the District must incorporate these requirements and approved schedules of compliance in a clearly enforceable manner.

2.2 **Finding:** Certain BAAQMD title V permits contain permit shield language that may unnecessarily limit the District's and EPA's authority to initiate an enforcement action for a source that violates an applicable requirement.

Discussion: The majority of permits we reviewed did not include a permit shield. Some permits included a permit shield that explains the shield regarding non-applicable requirements and the subsumed applicable requirements. Overall, those sections of the permit properly discussed the bases of the non-applicable requirements and what specific permit conditions would ensure compliance with the subsumed applicable requirements. However, similar to our 2009 Evaluation,[13] we found some of the permit shield language could unnecessarily limit the District's and EPA's authority to initiate an enforcement action. For example, we found the following language in the non-applicable requirements section of a permit: *"…Enforcement actions and litigation may not be initiated against the source or group of sources covered by this shield based on the regulatory and/or statutory provisions cited, as long as the reasons listed below remain valid for the source or group of sources covered by this shield*", and in the subsumed requirement section: *"…Enforcement actions and litigation may not be initiated against the source or group of sources covered by this shield based on the subsumed monitoring requirements cited*". Such language regarding enforcement actions is not appropriate, because an enforcement action can still be taken if there are reasons not explicitly stated in the permit that the shield should be invalidated.

Recommendation: To ensure the permit shield will not unnecessarily limit the authority of the District, EPA, and the public to initiate enforcement actions, the District must remove the permit shield language regarding enforcement actions and litigation by amending the permit shield language in the District's Regulation 2, Rule 6. The District should consider including the language in 40 CFR 70.6(f)(3) in its permit shields.

2.3 **Finding:** The BAAQMD has an internal quality assurance process for reviewing draft versions of permits, which minimizes opportunities for errors before the documents are made available for review by the public and the EPA.

Discussion: The District reported that all draft title V permits are routed through the Senior Engineer dedicated to the title V program to ensure consistency. The District uses a title V checklist that documents what parts of the permit and statement of basis have been reviewed by staff. The District included a copy of this checklist in response to our questionnaire (see

[13] See Finding 2.4 in the 2009 Evaluation.

Appendix B). During interviews, Engineering Division staff referenced several guidance documents and templates used to promote consistency in title V permits.[14]

Based on the District's checklist, our understanding is that draft title V permits are generally reviewed by District personnel in the following order: permit engineer, permit engineer's supervisor, the senior engineer dedicated to the title V program, the title V supervising engineer, the permit engineer's manager, the manager assigned to the District's title V program, and finally by the Engineering Division Director (as needed). These reviews occur within the Engineering Division and are documented in the District's title V checklist.

Though not included in the checklist, Engineering Division staff reported that initial and renewal draft title V permits are also reviewed by the Compliance and Enforcement Division, and the Legal Division reviews all draft permits excluding administrative amendment actions.

Recommendation: The EPA commends the BAAQMD for its comprehensive internal draft permit review practices. The EPA recommends that the District update its title V checklist to document the review by the Compliance and Enforcement and Legal Divisions.

2.4 **Finding:** The BAAQMD has improved its statements of basis over time, and generally produces detailed statements of basis in accordance with EPA guidance.

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

The EPA has issued guidance on the required content of a statement of basis on several occasions, most recently in 2014. This guidance has consistently explained the need for permitting authorities to develop a statement of basis with sufficient detail to document the decisions made in the permitting process. 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*). 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*

[14] See Finding 2.5 of this report for more discussion on template and guidance documents.

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. Appendix D of this report contains a summary of the EPA guidance to date on the suggested elements to be included in a statement of basis.

The BAAQMD's statements of basis consistently contain a record of what changes are being made to permits using redline/strikethrough and a discussion on permitting history and compliance status, and generally provide a clear basis for the BAAQMD's determination of New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) applicability as well as the applicability of State Implementation Plan (SIP)-approved rules. During interviews, staff reported that the Compliance and Enforcement Division used to develop a report on the Source's compliance history for inclusion in the statement of basis; however, this practice discontinued due to competing workload priorities.

Recommendation: The EPA commends the BAAQMD for its efforts in producing detailed statements of basis that clearly state why the permitted source is subject to a standard. To improve, the EPA recommends the BAAQMD also include a summary of the source's compliance history in the statement of basis.

2.5 **Finding:** The BAAQMD uses template permit documents and has several guidance documents for reference, which promotes consistency in its permits.

Discussion: During staff interviews, we learned that the BAAQMD uses templates for title V renewal permits and corresponding statements of basis.[15] The title V checklist discussed in Finding 2.3 above also serves as a checklist for the permit engineer during permit development.

The BAAQMD's title V renewal permit template includes a cover page with the Source's general information, responsible official, and signature line for the Air Pollution Control Officer. The template title V permit is divided into 11 sections: Standard Conditions, Equipment, Generally Applicable Requirements, Source-Specific Applicable Requirements, Schedule of Compliance, Permit Conditions, Applicable Limits & Compliance Monitoring Requirements, Test Methods, Permit Shield, Revision History, Glossary, and Title IV Acid Rain Permit (if applicable).

[15] See Finding 2.4 of this report for more discussion on the BAAQMD's statements of basis.

During interviews, permit engineers noted that they reference several District resources throughout permit development. The Engineering Division has a document titled "Permit Handbook" on its website.[16] Per the Permit Handbook, the purpose is to set forth the fixed standards and objective measurements to be used by District engineers in determining whether a particular permit may be issued to a particular project belonging to a given source category. The Permit Handbook is intended for use by District staff as well as permit applicants. Among other information, it includes template permit conditions and source-specific technical information, such as emission calculation guidance. Additionally, the District's Manual of Procedures, Volume II, Part 3 discusses title V permit processing.[17] The District also maintains a Best Available Control Technology and Best Available Control Technology for Toxics Workbook on its website.[18] Though intended as guidance during the NSR permitting process, this workbook serves as a reference for permit engineers during the title V permitting process.

Recommendation: We commend the BAAQMD for promoting consistency between its permit documents by using templates and for maintaining several technical guidance documents on its public website for reference by District staff, permit applicants, and the public.

2.6 **Finding:** The District's statements of basis do not consistently include an analysis of potential environmental justice issues, which could be used to inform outreach efforts.

Discussion: The EPA defines "Environmental Justice" to include the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and polices. The EPA's goal is to provide an opportunity for overburdened populations or communities to participate in the permitting process. "Overburdened" is used to describe the minority, low-income, tribal and indigenous populations or communities in the United States that potentially experience disproportionate environmental harms and risks due to greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities. [19]

On December 15, 2021, in an attempt to better address air pollution in areas overburdened by environmental health stressors, the BAAQMD adopted amendments to Regulation 2, Rules 1 and 5.[20] These changes are implemented through the District's NSR permit program for the construction of new sources and modification of existing sources of toxic air contaminants. These rule amendments included: defining overburdened communities; setting a more

[16] See https://www.baaqmd.gov/~/media/files/engineering/permit-handbook/baaqmd-permit-handbook.pdf?la=en.
[17] See https://www.baaqmd.gov/~/media/files/records/mop/vol-2/vol2_pt3.pdf?la=en&rev=d70c27b6180444f7bb723847d0921c92.
[18] See https://www.baaqmd.gov/permits/permitting-manuals/bact-tbact-workbook.
[19] See https://www.epa.gov/environmentaljustice/ej-2020-glossary.
[20] See https://www.baaqmd.gov/news-and-events/page-resources/2021-news/121521-permit-rulehttps://www.baaqmd.gov/~/media/files/engineering/permit-handbook/baaqmd-permit-handbook.pdf?la=en.

stringent cancer risk limit in overburdened communities by lowering it from 10 in one million to 6 in one million; and enhancing the public notifications for projects within overburdened communities. After reviewing the draft report, the District explained that any analyses associated with environmental justice or overburdened communities and documented in an Engineering Evaluation through the NSR process are attached to the associated title V statement of basis. During our evaluation, the EPA did not have an opportunity to review a statement of basis that included this information. However, we did note that no additional EJ-related analyses are conducted during the title V permitting process. This issue is further discussed in Finding 4.1. During our interviews, many District employees suggested that EPA training on environmental justice would be appreciated.[21]

Recommendation: The EPA commends the District for attempting to mitigate environmental impacts in overburdened communities. The EPA suggests that the District expand its environmental justice efforts to its title V program. Specifically, the District should consider working to enhance public involvement in the title V process for communities with environmental justice concerns. Further, the EPA is available to provide trainings to California Air Districts, when available and appropriate, on environmental justice.

2.7 **Finding:** While the BAAQMD generally references the underlying origin and authority for permit conditions, the references to the underlying origin often lack specificity.

Discussion: Each title V permit is required to specify and reference the origin and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.[22] In most cases, the origin and authority for a permit condition can be referenced by citing to the particular rule or regulation. The District consistently cites a basis for each permit condition; however, its practice of only citing to "BACT" meaning Best Available Control Technology, "RACT" meaning Reasonably Available Control Technology, or "Offsets" for NSR requirements is insufficient.

For NSR requirements, the *authority* for the permit condition stems from the SIP-approved NSR rule. But, because NSR rules likely do not specify the emissions limits and associated monitoring, recordkeeping, and reporting requirements to which the source is subject to under the NSR determination, the *origin* of the title V permit condition is the actual NSR permit issued to the source. Thus, requirements stemming from NSR rules, or the Prevention of Significant Deterioration (PSD) program at 40 CFR 52.21, should generally cite the underlying rule or regulation as the authority and the specific NSR permit action—not just "BACT"—as the origin.

[21] In August 2022, the EPA issued Frequent Questions about Environmental Justice and Civil Right in Permitting (Interim) to provide information to federal, state, and local permitting programs to help them meet their responsibilities to integrate environmental justice and civil rights into relevant environmental permitting processes. See https://www.epa.gov/external-civil-rights/ej-and-civil-rights-permitting-frequently-asked-questions. In December of 2022, the EPA's Office of Air and Radiation also issued 8 principles to guide consideration of environmental justice in CAA permitting decisions. See https://www.epa.gov/caa-permitting/ej-air-permitting-principles-addressing-environmental-justice-concerns-air.https://www.baaqmd.gov/~/media/files/engineering/permit-handbook/baaqmd-permit-handbook.pdf?la=en

[22] See 40 CFR 70.6(a)(1)(i).

Otherwise, it is unclear how the EPA and public can verify BACT determinations have been correctly incorporated into the title V permit.

Recommendation: To address this finding, the District should develop a plan to revise its title V permits to assure that each permit cites the appropriate NSR/PSD permits and District NSR rules as part of the origin and authority for a permit term or condition as required by 40 CFR 70.6(a)(1)(i).

2.8 **Finding:** The BAAQMD generally processes title V permit renewal applications in a consistent and proper manner similar to its initial title V permit applications.

Discussion: Federal regulations require that title V operating permits expire at least every five years and may be renewed before their expiration. 40 CFR 70.7(c)(1)(i) notes that permits being renewed are subject to the same procedural requirements, including those for public participation and affected State and EPA review, that apply to initial permit issuance. The BAAQMD's Regulation 2, Rule 6 includes the same requirements.

In our file review, we found that the District usually treats applications for title V permit renewal in a manner similar to applications for initial title V permits. When renewing a title V permit, the District typically reassesses the applicability of requirements to the source, highlighting any changes in applicability that may have occurred since the last permit issuance. Applicability can evolve over time, whether due to changes in a source's method of operation or changes to regulations, and it is important that all applicable requirements are included in renewed title V permits.

Recommendation: The EPA commends the District for re-evaluating a source's applicable requirements at the time of renewal and for documenting the permit changes in the statement of basis and encourages the District to continue this practice.

2.9 **Finding:** Most title V permit conditions with District rule requirements are appropriately marked as not federally enforceable. Additionally, most conditions appropriately reference the current SIP rules most recently approved by EPA.

Discussion: Permit conditions based on state or local rules are only federal applicable requirements if the rule has been approved by the EPA into the California SIP. Some state and local rules are only adopted at the local level and have not been, or will not be, approved into the SIP. State or local rules not approved into the SIP are not federal applicable requirements under the title V program and are only enforceable at the State or District level. During the file review, we found that Section VI, Permit Conditions, of the BAAQMD's title V permits clarifies that "any condition that is preceded by an asterisk is not federally enforceable." In making this statement and marking permit conditions with asterisks accordingly, the BAAQMD clearly indicates the enforceability of all permit conditions.

In our 2009 Evaluation,[23] we reported that some SIP rules were incorrectly referenced in some of BAAQMD's title V permits by being marked as not federally enforceable, because a SIP-approved version of the rule had existed in addition to a more recently adopted local version, or the cited version of a rule was in the SIP and was federally enforceable.

During our file review, we found that the BAAQMD has improved its title V templates by including appropriate language in BAAQMD's title V permits that all emissions units at the facility must comply with both the current local rules and the versions of the rules in the SIP until the EPA has reviewed and approved the District's revision of the regulation. We generally found that the District's title V permits contained accurate SIP rule citations. However, we found some examples of incorrect references to SIP rules. These rules were identified as federally enforceable, but the referenced versions of the SIP rule pre-dated more recent versions.

Recommendation: The EPA commends the BAAQMD for identifying which conditions are federally and locally enforceable in their title V permits. The District should continue this labelling practice and ensure ATC and PTO requirements remain federal applicable requirements. In addition, during the permit preparation process, the District should ensure that they include all SIP-approved requirements, especially in instances where the EPA has approved a more recent version of the District-adopted rule. Region 9 maintains a database of federally enforceable SIP rules on its website, which permit engineers may find useful when verifying the latest SIP-approved versions of rules.[24]

2.10 **Finding:** While District staff and management are generally satisfied with the District's title V permit format, the District has made no decisions on template changes that were under discussion during our 2009 Evaluation.

Discussion: In our 2009 Evaluation,[25] we reported that the District was considering ways to improve the readability of the permits, which could include merging permit Sections IV and VII (Source-Specific Applicable Requirements and Applicable Limits & Compliance Monitoring Requirements). During interviews for this evaluation, we heard that the District was still considering this change.

For most of the District's title V permits, the applicable requirements and monitoring requirements are listed in tabular format, with one table per emissions unit or group of emissions units. During interviews, staff indicated that the tables make it easy to identify the applicable requirements that apply to each emissions unit at a title V facility. Some staff and management are generally satisfied with this format and believe that it promotes consistency, accuracy, and comprehensiveness. However, some staff and management have acknowledged that a disadvantage of this practice is that with complex sources such as refineries, it results in

[23] See Finding 2.6 in the 2009 Evaluation.

[24] See https://www.epa.gov/air-quality-implementation-plans/approved-air-quality-implementation-plans-epas-pacific-southwest.

[25] See Finding 2.3 in the 2009 Evaluation.

voluminous permits with redundant text. Each applicable requirement, e.g., an applicable NSPS or NESHAP provision, is listed in a row in Table IV (Source-Specific Applicable Requirements). The applicable requirements are typically listed multiple times in Table IV because they apply to more than one emissions unit or group of emissions units. Some of the same applicable requirements are then repeated several more times in Table VII (Applicable Limits & Compliance Monitoring Requirements).

The District combined the tables in approximately four permits, but reported that it would significantly increase the permit processing time to combine the tables in permits for sources with more emissions units during the next permit revision.

Recommendation: The EPA recommends prioritizing discussions on the improvement of permits and implementing decisions in a timely manner.

2.11 **Finding:** The District routinely performs single stationary source determinations for CAA permitting purposes and documents these decisions in the statement of basis, a necessary practice in determining the applicable requirements.

Discussion: Large industrial complexes often have emissions units that are not directly associated with the primary activity at the site (based on having a different two-digit Standard Industrial Classification (SIC) code). When issuing title V and NSR permits to such facilities, permitting authorities must determine whether such emissions units constitute part of the major stationary source for CAA permitting purposes. In cases where an activity has a different two-digit SIC code, permitting authorities must determine whether the emissions units comprise a "support facility," defined in EPA guidance as "facilities that convey, store, or otherwise assist in the production of the principal product."[26]

In our 2009 Evaluation,[27] we found that the District had not consistently applied the support facility test to determine whether two facilities, such as an oil refinery and its support facility, constitute a single stationary source for CAA permitting purposes. During our file review for our current evaluation, we found that the District has since improved its permit application review process by identifying co-locating facilities at large industrial complexes, such as refineries and landfills, and determining whether such facilities shall be considered the same stationary source as the industrial complexes themselves.

Recommendation: The EPA commends the BAAQMD for applying a support facility analysis in preparing title V permits, especially for large sources, such as refineries. The District should continue to evaluate all facilities adjacent to the refineries and determine whether they are support facilities that should be treated as part of the refinery.

[26] See draft New Source Review Workshop Manual, October 1990, page A.4: https://www.epa.gov/nsr/nsr-workshop-manual-draft-october-1990.

[27] See Finding 2.8 in the 2009 Evaluation.

2.12 **Finding:** The District has improved its streamlining practices in the rare scenarios where streamlining occurs.

Discussion: Streamlining applicable requirements is an acceptable practice but must be appropriately documented to assure compliance with all requirements. The EPA most recently provided guidance on streamlining in 2014 in the EPA's April 30, 2014 memorandum, "Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits" (see Appendix D). The EPA initially provided guidance in our March 5, 1996 guidance document, "White Paper Number 2 for Improved Implementation of The Part 70 Operating Permit Program."[28] The BAAQMD's title V permits sometimes contain streamlined requirements in which one or more applicable requirement are subsumed under the most stringent requirement that applies to an emissions unit. For example, emissions limits from the NSPS and the more stringent NSR requirements may be streamlined into a single limit.

In our 2009 Evaluation,[29] we found that the District's practice regarding streamlining of multiple applicable requirements was unclear, as the corresponding statements of basis did not document the streamlining process by explaining how the requirement included in the permit ensures compliance with any subsumed requirements. During this evaluation, the District reported that it has issued some permits with subsumed monitoring, recordkeeping, or reporting requirements. However, streamlining is not common in title V permits and is only conducted at the request of the applicant. Though very few instances of streamlining were identified during our file review, it appeared to be sufficiently documented in the statement of basis.

Recommendation: The EPA encourages the BAAQMD to continue its practice of streamlining title V permit requirements, where applicable, and documenting the process appropriately within the statement of basis.

[28] See https://www.epa.gov/title-v-operating-permits/white-paper-number-2-improved-implementation-part-70-operating-permits.
[29] See Finding 2.9 in the 2009 Evaluation.

3. Monitoring

The purpose of this section is to evaluate the permitting authority's procedures for meeting title V monitoring requirements. Part 70 requires title V permits to include monitoring and related recordkeeping and reporting requirements. See 40 CFR 70.6(a)(3). Each permit must contain monitoring and analytical procedures or test methods as required by applicable monitoring and testing requirements. Where the applicable requirement itself does not require periodic testing or monitoring, the permitting authority must supplement the permit with 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 must require that each title V source record all required monitoring data and supporting information and retain such records for a period of at least five years from the date the monitoring sample, measurement, report, or application was made. With respect to reporting, permits must include all applicable reporting requirements and require (1) submittal of reports of any required monitoring at least every six months and (2) prompt reporting of any deviations from permit requirements. All required reports must be certified by a responsible official consistent with the requirements of 40 CFR 70.5(d).

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

3.1 **Finding:** The BAAQMD usually includes a detailed CAM analysis in their statements of basis that clearly documents the BAAQMD's determination and explains the applicable monitoring requirements.

Discussion: CAM regulations, found at 40 CFR part 64, apply to title V sources with large emissions units that rely on add-on control devices to comply with applicable requirements. The underlying principle, as stated in the preamble to our 1997 rulemaking, 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."[30] Per CAM regulations, sources are responsible for proposing a CAM plan to the permitting authority that provides a reasonable assurance of compliance with applicable requirements for pollutant-specific emissions units with add-on control devices.

[30] 62 FR 54902, October 22, 1997.

The District reported that there are fewer than five facilities in its jurisdiction that are subject to the CAM rule. In the permits we reviewed, we found that the District generally explains CAM applicability in its statement of basis and, for sources subject to CAM, includes the identified monitoring conditions in the title V permit. Though the District has stated that it provides training on CAM and monitoring, during our interviews, some Engineering Division staff indicated that they would like additional training on the subject. Further, the District's current statement of basis template indicates that CAM should be discussed if it applies, as opposed to all the time. We found examples where CAM did not appear to be re-evaluated in permit renewal actions. CAM applicability can evolve over time as a source makes changes, and thus its applicability should be verified in each iteration of a title V permit, including in modification or renewal actions where the District determined CAM did not apply in the initial title V action.

Recommendation: We commend the BAAQMD for including detailed CAM analyses in statements of basis. The BAAQMD should continue to review and discuss CAM applicability as it processes initial permits, permit renewals, and significant modifications. Additionally, CAM training should continue to be made available for permitting staff.

3.2 **Finding:** The BAAQMD's title V permit conditions generally contain monitoring that is sufficient to determine compliance with emissions limits, as required by the Part 70 regulations, except for volatile organic compound (VOC)-emitting equipment and certain aspects of the enforceability of monitoring requirements.

Discussion: Part 70 and the BAAQMD's EPA-approved title V rules have provisions that require that permits contain monitoring that is sufficient to demonstrate compliance with all applicable requirements. During our file review, we found that the BAAQMD's title V permits generally contain sufficient monitoring requirements to assure compliance with applicable requirements and permit conditions. Many of the applicable requirements incorporated into the District's title V permits already contain sufficient monitoring (such as NSR permit conditions, SIP-approved rules, NSPS/NESHAP proposed by the EPA after November 15, 1990, and CEMS required for large combustion sources). Source testing, parametric monitoring of control device operation, and associated recordkeeping are used to assure compliance with emissions limits.

An exception where the BAAQMD's title V permits do not contain appropriate monitoring provisions is related to monitoring requirements for VOC-emitting equipment. In our 2009 Evaluation,[31] we believed that the Reasonably Available Control Technology (RACT) regulations, developed by the BAAQMD and approved into the SIP as Regulation 8 (Organic Compounds), were sufficient to meet the title V requirements. However, during our file review in this program evaluation, we found that while most of the BAAQMD's title V permits contain sufficient monitoring requirements, some lack appropriate monitoring requirements for certain VOC-emitting equipment. Additionally, during interviews, it was suggested that fugitive emissions of VOC were not sufficiently monitored.

[31] See Finding 3.1 in the 2009 Evaluation.

Another exception is related to the enforceability of monitoring requirements, specifically Section VII and Table VII of the BAAQMD's title V permits. While Section VII of the BAAQMD's title V permits summarizes applicable emissions limits and compliance monitoring requirements from local rules, SIP-approved rules, NSR permit conditions, and NSPS/NESHAP provisions, it can be superseded by Sections I through VI of the permits in the case of conflict with any requirement in preceding sections. If a prior section contains requirements that differ from the requirements identified in Section VII, the enforceability of the requirements in Section VII may be compromised.

Recommendation: We commend the BAAQMD for generally including sufficient monitoring requirements in title V permits. The BAAQMD should continue to ensure that all title V permits have monitoring sufficient to determine compliance, including ensuring VOC emissions are appropriately and periodically monitored. Additionally, the EPA recommends the District incorporate all applicable monitoring requirements into permit conditions in Section VI of the title V permit to ensure practical enforceability.

3.3 **Finding:** Emissions limitations used to avoid requirements like major NSR or title V are generally enforceable.

Discussion: A source may accept a voluntary limit (also known as a "synthetic minor" limit when the source is not a true minor source) to maintain its potential to emit (PTE) below an applicable major source threshold and thereby avoid major NSR permit requirements and/or the need for a title V permit. Sources establish such a limit by obtaining a synthetic minor permit containing practically enforceable emissions limitations from the permitting authority.

According to the EPA's guidance, synthetic minor limits must be enforceable as a practical matter, meaning they are both legally and practicably enforceable. Additionally, for emissions limits in a permit to be practicably enforceable, the permit provisions must specify: 1) technically-accurate limitations and the portions of the source subject to such limitations; 2) the time period for the limitations (emissions limit averaging period); and 3) the method to determine compliance, including appropriate and practically enforceable monitoring, recordkeeping, and reporting requirements.[32]

In response to a petition regarding the Hu Honua Bioenergy Facility in Hawaii, the EPA stated that synthetic minor permits must specify: 1) that all actual emissions at the source are considered in determining compliance with its synthetic minor limits, including emissions during startup, shutdown, malfunction or upset; 2) that emissions during startup and shutdown (as well as emissions during other non-startup/shutdown operating conditions) must be included in the semi-annual reports or in determining compliance with the emissions limits; and

[32] *Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)*, John S. Seitz, Director, Office of Air Quality Planning and Standards (January 25, 1995).

3) how the source's emissions shall be determined or measured for assessing compliance with the emissions limits.[33]

Though the District uses standard permit conditions and guidance documents, which are further discussed in Finding 2.5, the District does not have a policy specifically for setting synthetic minor limits. Local Regulation 2, Rule 6 allows sources seeking to avoid major source status to do so through voluntarily limiting a source's PTE. During our file review, we found that the emission limitations in the District's permits are generally enforceable as a practical matter. However, as detailed in Finding 5.3 below, our interviews indicate that the District is not consistently tracking the facility-wide PTE during each minor source modification action, which could undermine the District's major and minor source permitting (including synthetic minor permitting) programs. See Finding 5.3 for additional information.

Recommendation: We commend the BAAQMD in setting enforceable emission limits in most cases. We recommend that permitting staff take the EPA's online training for *Setting Enforceable Potential to Emit Limits in NSR Permits* and follow the criteria outlined in the Hu Honua when establishing synthetic minor limits, as well as other EPA guidance.[34]

[33] *Order Responding to Petitioner's Request that the Administrator Object to Issuance of State Operating Permit Petition No. IX-2011-1*, Gina McCarthy, Administrator (February 7, 2014).
[34] See https://airknowledge.gov/SI/PERM203-SI.html.

4. Public Participation and Affected State Review

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

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

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

4.1 **Finding:** The District is generally transitioning toward a more proactive community engagement approach but has not incorporated this approach into its title V program.

Discussion: The BAAQMD's jurisdiction includes sources located throughout the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, southwestern Solano, and southern Sonoma counties in the San Francisco Bay Area. In response to California Assembly Bill (AB) 617 legislation and its own overburdened communities program, the District has increased its use of translations and public outreach in certain communities.[35] In addition, the District's Community Engagement Director position, created in the time period after our

[35] See https://www.baaqmd.gov/community-health.

last evaluation, is designed to carry out the outreach effort to communities with Environmental Justice concerns. In the past, the community engagement effort at the BAAQMD was more reactive. The District is transitioning to a more proactive effort on community engagement as evidenced by the increase in translations of public-facing documents and multi-lingual workshops and meetings that are held in identified communities using CalEnviroScreen as part of both the AB 617 program and the overburdened communities program. We understand that the BAAQMD's implementation of the AB 617 legislation and the District's overburdened communities program is currently done through the District's NSR program rather than through its title V program.

EPA notes, however, that during our interviews with permitting staff and management, it appears the District's efforts to improve outreach are not being applied to the title V program. For example, the District does not translate notices of proposed title V permit actions in languages other than English. We found that permitting staff and management do not routinely use available community engagement tools like maps that can identify limited English-speaking communities to inform permitting outreach activities such as public notification or workshops. The use of these tools may require engagement with and work from other groups in the BAAQMD outside of the Engineering Division.

The EPA prepared a map of linguistically isolated communities within the BAAQMD's jurisdiction in which title V permits have been or may be issued (see Appendix E). The EPA's map indicates that there are numerous populations that are linguistically isolated. These linguistically isolated communities have a significant population density, and thus it may be appropriate for the BAAQMD to provide translation services in those communities during the title V permitting process. Section 502(b)(3)(C)(6) of the Act and 40 CFR 70.7(h) require a Part 70 program to have adequate procedures for public notice. Using a map like that found in Appendix E may provide additional opportunities to direct the BAAQMD's translation efforts.[36]

Further, 40 CFR Part 7.35(a) provides additional detail regarding prohibitions for any program or activity receiving EPA assistance concerning contractual, licensing, or other arrangements on the basis of race, color, national origin or, if applicable, sex.[37] In addition, 40 CFR 7.35(c) states "[a] recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart." Appendix E of this report also includes a copy of a recent preliminary decision regarding this topic dated March 30, 2021 from the EPA's External Civil Rights Compliance Office to Carol S. Cromer, Director, Missouri Department of Natural Resources.

[36] The use of the State of California's environmental justice tool CalEnviroScreen by Engineering Division staff may also assist in learning where best to deploy translation resources.

[37] 40 CFR 7.35(a) details obligations for federal grantees in demonstrating compliance with title 6 of the Civil Rights Act of 1964.

Recommendation: We commend the BAAQMD's transition to a more proactive approach for community engagement and efforts to provide and improve translation services for linguistically isolated communities within its jurisdiction as part of its NSR program. The EPA encourages the District to also apply this approach in its title V permit program. The BAAQMD should incorporate translation efforts into its title V program by using mapping tools as appropriate to assure updated demographic information. The EPA recommends that Engineering Division management and staff increase communication, coordination, and collaboration with the District's community engagement efforts.

4.2 **Finding:** The BAAQMD maintains a detailed public website and uses e-noticing methods to meet the public noticing requirements of title V.

Discussion: The BAAQMD uses its website to make information about title V and synthetic minor permits available to the general public. This provides easy access to information that is useful for the public review process, and can result in a more informed public, and, consequently, the public may provide more constructive comments during title V permit public comment periods. Currently, the BAAQMD posts relevant title V permit information on its website, including, but not limited to, proposed and final title V permits, statements of basis, public notices, permit appeal procedures, and general title V information and guidance. This includes a list of active projects that are in the public comment period along with the corresponding draft permit, statement of basis, and public notice that includes information on how to comment electronically or by mail.[38]

The District's website also provides general information to the public and regulated community regarding the BAAQMD's permitting program and archive folders that contain historical permitting files.[39] The public can find information regarding the permitting process, whether a permit is needed for an operation, how to obtain a permit, application forms, and information about related programs that inform the District's permitting program.

The BAAQMD maintains electronic mailing lists for title V public notices. Members of the public may sign up for the title V public notice mailing list on the District's website. However, as discussed in Finding 4.1, the District does not currently translate notices of proposed title V permit actions in languages other than English as required by 40 CFR Part 7.35(a). We understand that the BAAQMD is developing strategies to enhance public engagement as part of its commitment under California AB 423.

Recommendation: We encourage the BAAQMD to continue providing information related to title V permits to the public via their website and to notify interested parties of relevant title V permitting actions via District electronic mailing lists. In addition, the District should provide

[38] See https://www.BAAQMD.org/content/BAAQMD/permits/public-notices.html
[39] See https://www.BAAQMD.org/content/BAAQMD/permits.html and https://www.BAAQMD.org/content/BAAQMD/permits/equipment-types/titlev.html

translations of notices consistent with the discussion in Finding 4.1.

4.3 **Finding:** The District provides appropriate notification regarding the public's right to petition the EPA Administrator to object to a title V permit but could improve the information provided to the public by including links to the EPA's title V permit dashboard in all public notices.

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

The District's Regulation 2, Rule 6 contains the required information about the public's right to petition the EPA Administrator to object to a title V permit. During our file review, we found that the District generally informed the public of the right to petition the EPA Administrator to object to a title V permit in the public notice for title V permits. Some public notices included a link to the EPA's title V permit dashboard, where the public can find the dates for the EPA's 45-day review period.

Recommendation: The EPA commends the BAAQMD for informing the public of the right to petition the EPA Administrator to object to the issuance of a title V permit. We recommend including links to the EPA's title V permit dashboard in all public notices so the public can conveniently navigate to the relevant 45-day review period dates.

4.4 **Finding:** The District's practices around concurrent public and EPA review of title V permits are implemented consistent with current EPA regulations and guidance. However, the District has not adopted the recently amended language from 40 CFR 70.8(a)(1) into its title V program rules.

Discussion: Per section 505(b) of the CAA and 40 CFR 70.8, state and local permitting agencies are required to provide proposed title V permits to the EPA for a 45-day period during which the EPA may object to permit issuance. The EPA regulations under 40 CFR 70.8(a)(1) allow the 45-day EPA review period to occur either following the 30-day public comment period (i.e., sequentially), or at the same time as the local public comment period (i.e., concurrently).

The EPA amended 40 CFR 70.8(a)(1) on February 5, 2020, to allow either a sequential or concurrent EPA review.[41] This amendment was not in place at the time of the EPA's 2009 Evaluation for BAAQMD. Previously, the District allowed concurrent review through a resolution in a February 9, 1999 letter, from the EPA to David Dixon, clarifying the title V permitting expectations between EPA Region 9 and the California Districts.[42]

[40] 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.
[41] See 85 FR 6431.
[42] See https://www.epa.gov/sites/default/files/2015-08/documents/dixon.pdf.

When the public comment and the EPA review periods occur sequentially, permitting agencies will make the draft permit available for public comment, and following the close of public comment, provide the proposed permit and supporting documents to the EPA, including the statement of basis and any responses to comments if a significant comment is received.[43] When the public and the EPA review periods occur concurrently, a state or local agency will provide the EPA with the draft permit and supporting documents at the beginning of the public comment period. Concurrent review generally occurs when significant comments are not expected by the permitting authority.

The District's title V regulations in Regulation 2, Rule 6 are silent on allowing sequential or concurrent review. As specified in 40 CFR 70.8 and based on the previously referenced February 9, 1999 letter, if the BAAQMD receives significant comments from the public during the 30-day public review period,[44] the 45-day EPA review period must be restarted to allow the BAAQMD to prepare responses to the public comments, and an updated permit and statement of basis, if applicable, for submittal to the EPA. Although the District rarely receives public comments on its title V permits, the District has implemented this process for at least one title V permitting action. In that action, the District proposed a permit for concurrent review. After receiving public comments, the District held a second public comment period and, after considering all public comments and making any necessary changes to the permit in response to those comments, the District resubmitted the proposed permit and statement of basis (with changes, as necessary) for the EPA's 45-day review period.

The District's public notices generally describe the EPA review process and refer the reader to an EPA website that indicates when EPA's review period for a given permit action will end. We note that the District utilizes sequential review (i.e., public comment period followed by EPA review) for permits that are likely to receive numerous comments such as the title V permits for petroleum refineries.

Recommendation: We commend the BAAQMD for implementing a concurrent review process that is consistent with the requirements of the title V program and EPA guidance. We recommend that the District adopt the February 5, 2020 amendments to 40 CFR 70.8(a)(1) into the District's title V program rules.

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

[44] As stated in the preamble to our 2020 revisions to Part 70, "Significant comments in this context include, but are not limited to, comments that concern whether the title V permit includes terms and conditions addressing federal applicable requirements and requirements under part 70, including adequate monitoring and related recordkeeping and reporting requirements." See 85 FR 6431. For example, any comments related to the contents in the permit and/or determinations in the statement of basis would be considered significant comments. But, comments that are nongermane, such as comments providing general support for a permit action would not be significant comments.

4.5 **Finding:** The BAAQMD implements a business assistance program (BAP) to provide assistance to small business owners.

Discussion: Under section 507 of the CAA, permitting authorities are required to implement a small business assistance program to assist small businesses that need title V permits. During this evaluation, we found that the District has a full BAP to provide assistance to business owners and operators, small and large, in determining which requirements are applicable. The assistance includes coverage of title V small businesses.

During the interviews, the BAP staff stated that they help small businesses draft permit applications and review permits to ensure permit records adequately represent the source. This helps the District's Engineering Division staff to process permits.

Additionally, the BAP staff helps small businesses with pollution prevention by providing guidance on control technologies. For example, they help gas stations understand the benefits of Stage II vapor controls. The District has several areas on their website to which a potential permittee can access information about resources to assist them in both compliance with requirements and the permitting process. This information includes forms, calculation sheets, and other information to aid businesses developing permit applications.[45]

Discussions with the BAP staff also indicated that work related to title V sources is tracked so that time spent working with these sources is appropriately accounted for in tracking title V fees and revenue. This approach is primarily the result of having so few title V facilities that are also defined as small businesses (the BAAQMD BAP is largely focused on non-title V facilities as the title V applicability threshold for the Bay Area does not usually capture those facilities that are traditionally defined as small businesses under the CAA).

Recommendation: The EPA commends the District for its efforts to provide assistance to small businesses and recommends the District continue supporting small businesses by providing these services through its BAP.

4.6 **Finding:** We did not find evidence that the BAAQMD notified nearby tribes of title V permitting actions.

Discussion: During our 2009 Evaluation and current evaluation, we did not find evidence that the District notified tribes in the Bay Area regarding title V permit actions.

40 CFR 70.8(b)(1) requires that a permitting authority shall give notice of each draft permit to any affected State, which includes any state within 50 miles of the permitted source. While there are five federally recognized tribes within the District's geographic boundaries, none have been approved by the EPA to be treated in the same manner as a neighboring state for the

[45] See https://www.baaqmd.gov/permits, https://www.baaqmd.gov/rules-and-compliance/compliance-assistance/compliance-tips and https://www.baaqmd.gov/rules-and-compliance/compliance-assistance

purpose of "affected state" notification under section 505(a)(2) of the CAA.[46] The Robinson Rancheria in Nice, California in Lake County is the only tribe within 50 miles of the BAAQMD's geographic boundaries that has been approved by the EPA to be treated in the same manner as a neighboring state for the purpose of this notification.[47] This requires the District to give notice of draft title V permits for any source within 50 miles of the Robinson Rancheria. Regardless of the affected state status, the EPA encourages state and local air agencies to notify tribal governments when taking significant actions that may affect their air quality.[48]

Recommendation: The Robinson Rancheria in Lake County, California must be included in public notifications as an "affected state" when a title V applicant is within 50 miles of the tribal lands. More generally, we also encourage the District to notify tribal governments when taking significant actions that may affect their air quality.

4.7 **Finding:** While the District rarely receives comments on title V actions, when comments are received, the response to comments documents ("RTC") clearly address all issues raised by commenters and explain if and why changes were or were not made.

Discussion: The EPA's title V regulations under 40 CFR 70.7(h) and the District's title V program require notification of the public comment period for initial permits, significant modifications, and renewals, and requires that the permitting authority keep a record of the commenters and of the issues raised during the public participation process. The regulation also requires that the District respond in writing to all significant comments raised during the public participation process.

During our file review, we reviewed permits issued by the District within a five-year period. For this period, the District did not receive any comments that resulted in a significant change to the draft permit, which would have required the District to re-propose (and re-notice) a permit for comment. We note that the District voluntarily extended the public comment period for at least one permit action. After considering all public comments and making any necessary changes to the permit in response to those comments, the District submitted the proposed permit and statement of basis to the EPA for the EPA's 45-day review period.

The District has rarely received public comments on the title V permits proposed within the past five years. The District estimates that approximately 15% of initial permits and less than 1% of permit revisions and renewals have garnered public comments. For draft permits that have received comments, the District has rarely made significant changes to permit content.

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[46] The following five federally recognized Indian reservations are present in Southern Sonoma County: (1) Federated Indians of Graton Rancheria in Rohnert Park, California; (2) Lytton Rancheria of California in Santa Rosa, California; (3) Dry Creek Rancheria Band of Pomo Indians in Geyserville, California; (4) Kashia Band of Pomo Indians of the Stewarts Point Rancheria in Santa Rosa, California; and (5) Koi Nation of Northern California in Santa Rosa, California. See https://www.epa.gov/tribal-pacific-sw/map-federally-recognized-tribes-epas-pacific-southwest-region-9.

[47] The EPA maintains a map on its website of tribes in Region 9 that have received treatment as a state status for purposes of section 505(a)(2) of the CAA: https://www.epa.gov/caa-permitting/affected-states-notifications-region-9.

[48] A map of the tribal lands in California can be found at https://www3.epa.gov/region9/air/maps/ca_tribe.html.

More often, the statement of basis is revised in response to comments received to include additional background and explanation.

Based on our review, the District responds to all significant comments received in the District's RTCs. Additionally, the District notifies commenters of the District's responses. Public comments and the District's RTCs are posted on the District's website. Typically, comments that address non-substantive changes such as typographical errors or equipment clarifications do not result in a separate RTC. Instead, they are documented in the statement of basis, and a letter or email is sent to the commenter.

Recommendation: The EPA commends the District for its practices in responding to public comments. We encourage the District to continue notifying commenters of the District's response to public comments and posting the applicable RTC documents to the District's website.

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 each type of title V permit. The EPA, as an oversight agency, is charged with ensuring that these deadlines are met as well as ensuring that permits are issued consistent with title V requirements. Part 70 describes the required title V program procedures for permit issuance, revision, and renewal of title V permits. Specifically, 40 CFR 70.7 requires that a permitting authority take final action on each permit application within 18 months after receipt of a complete permit application, except that action must be taken on an application for a minor modification within 90 days after receipt of a complete permit application or 15 days after the end of the Administrator's 45-day review period.[49]

5.1 **Finding:** The District does not process title V actions in a timely manner, impeding the public's right to enforce all applicable requirements.

Discussion: As we found during our 2009 Evaluation,[50] the District does not consistently process permitting applications in a timely manner. This is mainly due to resource constraints and competing priorities, but delays can also occur due to other reasons such as missing information from the applicant. At the time we initiated our evaluation (October 2022), the BAAQMD had 82 title V major sources and 27 synthetic minor sources. After our site visit, the District provided a copy of the most recent title V permit application report (dated February 3, 2023) (see Appendix F). Of the 82 title V major sources, the report indicated that 55 had a pending renewal application. During the interviews, many members of the Engineering Division (both staff and management) expressed time constraints on permit issuance for title V permits. Based on the documentation the District provided, there were numerous permit applications that had not been processed before the 18-month deadline as required by 40 CFR 70.7. In January 2023, there were 303 open title V applications (3 initials, 55 renewals, 207 minor revisions, 21 significant revisions, and 17 administrative amendments). Of the 303 open applications, 162 were marked as overdue.[51] In addition to exceeding statutory permitting deadlines, delays create issues for the Compliance and Enforcement Division. See Finding 7.3.

Further, these significant and consistent delays over the entire history of the District's title V program impede the public's right to assess compliance with applicable requirements and/or initiate enforcement action through civil court. One purpose of the title V program is to "enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements."[52] Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they

[49] See 40 CFR 70.7(a)(2) and 70.7(e)(2)(iv).
[50] See Finding 5.1 in the 2009 Evaluation.
[51] The report notes that minor revisions are considered overdue 180 days from receipt unless they are delayed by NSR permitting, compliance, or source testing issues.
[52] See 57 FR 32251.

apply to the source's emissions units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements. An outdated title V permit that is missing applicable requirements or new emissions units may misinform the public as to the facility's compliance status. For example, a facility may not report deviations from permit requirements that have not been incorporated into the title V permit. This represents a potential environmental justice concern for overburdened communities near facilities, such as refineries, that may make numerous changes each year. The updated requirements may only be incorporated into the permit at the time of renewal, which could be 7-8 years after the permit was issued or last renewed by the District.

Recommendation: The District should conduct a review of its permit issuance process and then develop a plan of action for issuing title V permit actions in a timely manner. The EPA will work with the District on this finding and monitor whether the District is able to adequately administer the title V program.

5.2 **Finding:** Though not always timely, the BAAQMD generally processes title V permit actions in accordance with the District's EPA-approved title V program and the federal part 70 regulations.

Discussion: 40 CFR 70.8(a)(1) and the District's title V program require that proposed and final permits be sent to the EPA. During our review of recent actions, the EPA found that the BAAQMD routinely submits copies of both proposed and final title V permit actions to the EPA via the EPA Central Data Exchange's Electronic Permit System (EPS). The EPA receives the BAAQMD's permitting notices for initial and renewal permits, minor permit modifications and significant modifications. These notices generally include the notice of proposed action, the proposed permit, and the proposed statement of basis.

The District's title V program requires the development of a statement of basis, and the District provides the statement of basis during the public comment period and the EPA's 45-day review period. Section 2-6-427 of the District's Regulation 2, Rule 6, as amended on December 6, 2017, requires that the District prepare a statement of basis, in conjunction with the permit, that sets forth the legal and factual basis for the draft permit conditions. It also requires that the statement of basis explain the basis for the decisions in the permit, including the reasoning for additional monitoring requirements, and for the creation of any permit shield provisions. In 2020, the EPA revised the Part 70 program at 40 CFR 70.7 and 70.8 to make clear that the statement of basis must be made available to the public and the EPA. The District's title V rules were last amended in 2017, so they do not include these updated requirements.

Additionally, the District's statements of basis, as well as the permits, provide a permit history for each title V permit and usually include the dates for the initial permit issuance, minor and significant modifications, administrative amendments, and renewals for the stationary source. The District sometimes processes minor and significant modifications and administrative amendments at the same time of the renewal permit, to reduce administrative burdens. The

District rarely reopens permits, but has done so for at least one permit action, due to a rule change that was incorporated into the permit, in the last five years.

Recommendation: The EPA commends the District for submitting its proposed and final permit actions to the EPA for review. As mentioned elsewhere in this report, we encourage the District to update its title V rules so that they are consistent with the EPA's 2020 amendments to 40 CFR 70.7 and 70.8.

5.3 **Finding:** The District does not consistently evaluate the potential emissions from sources without title V permits to determine if they are major sources, which could result in sources improperly avoiding title V, major NSR, and other requirements.

Discussion: As discussed in Finding 3.3, a source may accept a voluntary limit (also known as a "synthetic minor" limit, because the source is not a true minor source) to maintain its PTE below an applicable major source threshold and thereby avoid major NSR permit requirements and/or the need for a title V permit. Sources establish such a limit by obtaining a synthetic minor permit containing practically enforceable emissions limitations from the permitting authority.

However, based on several interview responses, the District does not consistently track the facility-wide PTE of the sources it regulates. Instead, the District tracks annual emissions based on actual throughput values. While using actual emissions was acceptable for avoiding title V permitting as part of the EPA's 1995 transition policy, that policy expired in 2000.[53]

Determining whether a stationary source is a major source and subject to the title V program is based on potential, not actual, emissions.[54] We found during the evaluation that District permitting staff are generally familiar with calculating the PTE for title V sources, but they do not consistently calculate the PTE for minor sources. Instead, they generally rely on the actual annual emissions of each facility, which is calculated using reported throughputs from operating data. Therefore, the District calculates the actual emissions for the source rather than the maximum potential emissions. Because major source status is based on facility-wide *potential* emissions, it is untenable for the District to use their record of actual emissions to accurately determine when an existing minor source's potential emissions require it to obtain a title V or synthetic minor permit. Beyond title V applicability, this issue can also have implications in determining NSR program requirements and requirements for major sources of hazardous air pollutants (HAP). This also creates potential enforcement issues for the BAAQMD and the EPA, as sources may be avoiding title V and major NSR requirements despite having the potential to emit above major source thresholds.

[53] See the EPA's December 20, 1999 guidance memorandum "Third Extension of January 25, 1995 Potential to Emit Transition Policy." https://www.epa.gov/sites/default/files/2015-08/documents/4thext.pdf
[54] See definition of "Potential to emit" at 40 CFR 70.2.

After reviewing the draft report, the BAAQMD reported that the District will transition to a new database in October 2023 to process permit applications and track permitted emissions. This new database is expected to include tools for tracking facility-wide PTE.

Recommendation: The BAAQMD must develop a plan for ensuring the District can determine title V applicability according to the definition for "major source" under 40 CFR 70.2 by evaluating the facility-wide PTE when processing a permit application.

5.4 **Finding:** The District provides the EPA and the public with an opportunity to review and comment on proposed initial synthetic minor permits but does not do so for proposed revisions to synthetic minor operating permits.

Discussion: During our 2009 Evaluation,[55] we found that the District did not provide the EPA and the public an opportunity to review and comment on proposed synthetic minor operating permits. The EPA's Part 70 regulations do not provide specific requirements for synthetic minor permits. The EPA provides guidance for permitting authorities to develop such requirements for synthetic minor permits as part of their permitting programs in the agency's Memorandum entitled "Guidance an (*sic*) Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits" (January 25, 1995).[56] Section 2-6-423 of the District's Regulation 2, Rule 6 requires that the District provide to the EPA "a copy of each proposed and final synthetic minor operating permit." In practice, the District has provided opportunity for review and comment only for initial synthetic minor permits. The District has submitted these permits to the EPA and has made these permits available for public review and comment. It is unclear to the EPA whether Section 2-6-423 requires the District to also provide the EPA a copy of each synthetic minor permit revision for review.

Recommendation: The EPA commends the District for providing the EPA and the public with an opportunity to review and comment on proposed initial synthetic minor permits. However, we recommend updating Regulation 2, Rule 6 to require the District to also provide revisions to synthetic minor permits for public and EPA review when the revision involves a substantial change to a synthetic minor limit.

[55] See Finding 5.2 in the 2009 Evaluation.
[56] See https://www.epa.gov/sites/default/files/2015-08/documents/potoem.pdf.

6. Compliance

This section addresses the BAAQMD practices and procedures for issuing title V permits that ensure compliance with all applicable requirements. Title V permits must contain sufficient requirements to allow the permitting authority, the EPA, and the general public to adequately determine whether the permittee is in compliance 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:** The District's Compliance and Enforcement Division reviews nearly all title V deviation reports, annual compliance certifications, and semiannual monitoring reports submitted by Part 70 sources and uses the deviation reports to identify compliance issues.

Discussion: During interviews, the District's Compliance and Enforcement Division staff indicated that nearly all deviation reports, quarterly monitoring reports, and compliance certifications that sources submit to the District are reviewed by inspectors. Supervisors may also review reports as necessary.

In response to our initial questionnaire, the BAAQMD explained that all instances of noncompliance with the permit must be reported in writing to the Compliance and Enforcement Division within 10 calendar days of the discovery of the incident. Within 30 calendar days of the discovery of any incident of noncompliance, the facility must submit a written report including the probable cause of noncompliance and any corrective or preventative actions.

During our interviews, Compliance and Enforcement Division staff reported that most deviation reports result in Notices of Violation (NOVs). When the District receives deviation reports, inspectors generally conduct an investigation of the facility to determine compliance with permit conditions. If the District determines that a violation has occurred, the District will issue an NOV. Inspectors have found the deviation reports useful for this purpose.

Recommendation: The EPA commends the BAAQMD's efforts in reviewing deviation reports, semiannual monitoring reports, and compliance certifications. We encourage the BAAQMD to continue using title V deviation reports to prioritize and initiate inspections.

6.2 **Finding:** The District's Compliance and Enforcement Division is involved in title V permit review for initial and renewal actions prior to public notice, which may improve the enforceability of the District's permits.

Discussion: During interviews, the BAAQMD Engineering Division reported that all initial and renewal title V draft permits are routed to the Compliance and Enforcement Division. The District further explained that a title V checklist is routed along with the draft permit package during review (see Appendix B). This allows permit reviewers to see which parts of the permit and statement of basis have been reviewed by other staff and allows the reviewer to track what parts they have reviewed. During interviews, Compliance and Enforcement Division management indicated that the Division reviews draft title V permits. However, Compliance and Enforcement Division staff generally reported that they were not involved in the review of draft title V permits. See Finding 7.3 for a discussion on the communication between the BAAQMD's Engineering and Compliance and Enforcement Divisions.

Recommendation: The EPA commends the Compliance and Enforcement Division for reviewing draft permits. The Engineering Division could further strengthen the collaboration with the Compliance and Enforcement Division staff by updating the title V review checklist to standardize the inclusion of the Compliance and Enforcement Division, specifically an inspector assigned to the applicable source.

6.3 **Finding:** The District incorporates compliance schedules in permits when required, while the practice to generally resolve compliance issues before permit issuance minimizes the need to include them.

Discussion: The Part 70 program requires that each title V permit contain a schedule of compliance, or compliance schedule, if necessary.[57] Compliance schedules include enforceable milestones leading to compliance for those requirements for which a source is not in compliance. During interviews, the District provided examples of title V permits that included compliance schedules. However, because the District's rules prevent them from issuing preconstruction permits to sources that are out of compliance, the District usually addresses compliance issues prior to title V permit issuance. As a result, compliance schedules are often not needed.

After receiving a permit application, the permit engineer reviews the Source's compliance history. If patterns of recurring violations or current violations are discovered, the Engineering Division refers the compliance issue to the Compliance and Enforcement Division using the Enforcement Referral Form (see Appendix G). Compliance issue resolution can be time consuming, so this practice may delay the issuance of permits. However, the District has experience incorporating compliance schedules into title V permits, so they do not have to wait until the issue is resolved to issue a title V permit.

Recommendation: We commend the District for generally resolving compliance issues before issuing permits and incorporating compliance schedules into permits when necessary.

[57] See 40 CFR 70.6(c)(3) and 70.5(c)(8).

6.4 **Finding:** Compliance and Enforcement Division staff have the necessary equipment to perform their job duties.

Discussion: During interviews, members of the Compliance and Enforcement Division stated that they have sufficient tools and safety equipment to perform inspections, including access to an infrared camera. If an inspector determines they need equipment, they can submit a purchase order to be approved. Staff also reported that the District is generally supportive of expenses to purchase equipment, as needed.

Recommendation: The EPA commends the District for equipping Compliance and Enforcement staff with the necessary equipment to perform their job duties.

7. Resources and Internal Management

The purpose of this section is to evaluate how the permitting authority is administering its title V program. With respect to title V administration, the EPA's program evaluation: (1) focused on the permitting authority's progress toward issuing timely title V permit modifications 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. A key requirement of the Part 70 program is that the permitting authority establish an adequate fee program to ensure that title V fees (1) are adequate to cover title V permit program costs and (2) are used solely to cover the permit program costs. Regulations concerning the fee program and the appropriate criteria for determining the adequacy of such programs are set forth in 40 CFR 70.9.

7.1 **Finding:** Engineering and Compliance and Enforcement Division staff generally report that they receive effective legal support from the District Counsel's office but would like more information on the resolution of enforcement cases.

Discussion: In our 2009 Evaluation,[58] we stated that the BAAQMD staff receive expert, knowledgeable, and experienced legal support. Since then, the District Counsel retired and a District Counsel with equally effective results was hired.

It is important to note that organizationally, while BAAQMD's Compliance and Enforcement Division identifies noncompliance situations, a settlement group within the legal group resolves noncompliance situations in terms of penalties following a penalty structure outlined in the California Health and Safety Code.[59]

During interviews of those involved in the enforcement process at BAAQMD, it became clear that communications between those who identify noncompliance and those who are involved in enforcement outcomes associated with those noncompliance situations resulted in confusion regarding compliance issue resolution. It appeared that once the compliance issues are identified, Compliance and Enforcement Division staff do not receive regular updates on enforcement cases, so they are generally unaware of the status of the case and associated penalties. As appropriate, it would be helpful to share enforcement case outcomes with District staff who work with the relevant source to ensure a common understanding of the source's compliance history. In fact, during interviews of Compliance and Enforcement Division staff and

[58] See Finding 7.8 in the 2009 Evaluation.

[59] For further discussion, see "State Review Framework, Bay Area Air Quality Management District, California, Clean Air Act Implementation in Federal Fiscal Year 2016, U.S. Environmental Protection Agency Region 9, San Francisco, Final Report March 11, 2019" at pages 15 to 16. This report can be found at https://www.epa.gov/sites/default/files/2019-06/documents/srf-rd3-rev-ca.pdf .

management, only one interviewee was aware of the District's use of the California Health and Safety Code in establishing penalties for noncompliance.

Recommendation: The EPA commends the BAAQMD on hiring a new District Counsel with extensive experience in air quality programs. The BAAQMD should continue to ensure that it receives effective legal support for the Part 70 program. The BAAQMD should improve communication and coordination with respect to enforcement outcomes among those involved in the resolution of noncompliance situations to ensure a common understanding of how enforcement efforts are resolved.

7.2 **Finding:** While the District tracks title V program expenses and revenue and those funds are spent solely to support the title V program, it is unclear whether these fees are sufficient to fully administer a successful program given the large permitting backlog and resource issues.

Discussion: The Part 70 regulations require that permit programs ensure that the collected title V fees are adequate to cover title V permit program costs and are used solely to cover the permit program's costs.[60]

In response to our questionnaire, the BAAQMD provided accounting data for July 1, 2018 – June 30, 2021. As noted elsewhere in this report, prior to the title V program, the BAAQMD was already implementing its own permitting program. When the Part 70 requirements took effect, the BAAQMD treated the Part 70 requirements as an overlay to the existing BAAQMD permitting program. As a result of this approach, the BAAQMD treated the revenue and expenses associated with the Part 70 program as supplemental to the revenue and expenses associated with the existing local permitting program. Thus, the combination of their base permitting program and the additional Part 70 requirements that apply to title V sources result in the full program as implemented by the BAAQMD. Using an approach based on full cost recovery, the BAAQMD ensures that it collects fees for its base permitting program and the supplemental title V costs (including overhead, compliance costs, etc.) that match the expenses used for implementing the supplemental title V program requirements. See Appendix H for details regarding their accounting approach.

As discussed in Findings 5.1 and 7.6, the District has a title V permitting backlog and is experiencing difficulty retaining Engineering Division and Compliance and Enforcement Division staff. Given the size of the District's title V permitting action backlog, it is not clear whether the title V fees are sufficient going forward to fully administer the program. The EPA notes that the District is in the process of improving the resources available to the title V program by hiring additional staff to address the current backlog. In December 2022, the BAAQMD Board of Directors authorized an additional 20 positions across the BAAQMD to address resource demands including those of the permitting program.

[60] See 40 CFR 70.9(a).

Recommendation: During the evaluation, the EPA provided the BAAQMD with the most recent EPA guidance on title V funding (see Appendix I). The BAAQMD should review the guidance to ensure their fee program is consistent with the EPA's title V fee policy and that fees will be sufficient going forward. The District should also continue its efforts to provide appropriate resources to administer the title V program more effectively, especially in addressing the existing permitting action backlog.

7.3 **Finding:** Communication between the Engineering Division and Compliance and Enforcement Division is inconsistent, which may impede the resolution of complex compliance issues at facilities.

Discussion: Based on staff interviews, we found there is a lack of communication and coordination at the staff level. The BAAQMD's Compliance and Enforcement Division and Engineering Division management continue to hold routine meetings to discuss permitting and compliance issues; however, such meetings are not held regularly at the staff level. Although the District's Engineering Division management and staff indicated that draft permits for unique sources are sent to the Compliance and Enforcement Division for review, the District's Compliance and Enforcement Division staff indicated that draft permits are rarely sent to the Compliance and Enforcement Division for review prior to the public comment period.[61]

As an illustrative example, the Compliance and Enforcement Division staff identified a potential noncompliance issue with a refinery permit involving the operation of an electrostatic precipitator downstream of a fluid catalytic cracking unit.[62] The BAAQMD issued multiple notices of violation related to the operating permit condition, but personnel representing the refinery said the condition could not be met as it would result in unsafe operating conditions. The Compliance and Enforcement Division staff brought the concern to the attention of the Engineering Division staff, but the issue remains unresolved. In reviewing the matter, the EPA identified similar operating permit conditions in use at other agencies within California, including a facility where a catastrophic explosion occurred in 2015.[63] It is unclear whether there is an ongoing discussion and/or plan to address the issue. The BAAQMD should encourage meaningful communication between permitting and compliance staff and develop processes for addressing title V permit implementation issues, such as practical enforceability, applicability determinations, and compliance determinations.

After reviewing the draft report, the District reported that the Compliance and Enforcement and Engineering Divisions are working together to improve information exchanges. For example, the District plans to use an updated Enforcement Referral Process within a digital program called AirTables. The District expects this tracking system to improve communications

[61] As discussed in Findings 2.3 and 6.2, Compliance and Enforcement management reported that the Engineering Division does send title V draft permits to the Compliance and Enforcement Division for review.
[62] See BAAQMD Chevron Refinery permit at Condition 7A (page 615) and condition 83 (page 690).
[63] See SCAQMD Torrance Refinery permit #181667, page 393, condition E193.19. For an example of the type of resource that may be useful in this situation, see https://www.csb.gov/csb-releases-final-report-into-2015-explosion-at-exxonmobil-refinery-in-torrance-california/ .

and coordination when questions and concerns arise that pertain to permitting and enforcement matters.

Recommendation: The EPA commends the BAAQMD's effort to maintain good communication between Engineering Division and Compliance and Enforcement Division management. However, the BAAQMD should promote increased communication and cooperation between Engineering Division and Compliance and Enforcement Division staff through systemic norms and processes, and explore ways to resolve permitting and enforcement issues among BAAQMD's Engineering Division and Compliance and Enforcement Division staff.

7.4 **Finding:** While the BAAQMD uses the EPA, the California Air Resources Board (CARB), and in-house courses to train permit staff, BAAQMD staff may benefit from additional training.

Discussion: During this evaluation, the District reported that there are 19 permit engineers that participate in writing title V permits. Distributing the title V workload among multiple engineers is an attempt to address the issue of a significant loss of institutional knowledge when a single permitting engineer leaves. However, the District's title V permitting program is experiencing staffing challenges associated with the varying levels of experience among the permitting staff as they move to a more distributed workload approach to process permits. In addition, we identified substantive issues related to permit preparation and content indicating a need for further title V training to prepare more effective permits (See Section 2). In interviews, staff identified title V training, primarily focusing on permit writing and inspections, as something that would improve the District's title V program. District staff specifically stated that training on federal regulations (NESHAPs and NSPS) would improve staff's familiarity with regulatory requirements and help permit engineers identify how best to incorporate these requirements into title V permits. Regulatory updates sent by EPA Region 9 may be shared with staff as they contain relevant updates to NSPS and NESHAP requirements and can be used as reference material for finding relevant information on the EPA's website. Additionally, the District should encourage staff to network with staff from other agencies by participating in other learning opportunities such as conferences, workshops and online trainings/webinars. The EPA has separately identified training needs related to CAM and other critical program elements and policies. See findings 2.6, 3.1, and 3.3.

The Compliance and Enforcement Division has an onboarding training program that includes training on title V inspections, investigations and required reporting. During interviews, staff and managers acknowledged that they would likely benefit from additional training.

Recommendation: The EPA commends the BAAQMD for distributing the title V workload to support succession planning. The District should identify additional core training needs and develop a curriculum that title V program staff in both the Engineering and Compliance and Enforcement Divisions should complete to enhance title V program understanding and improve permit writing and compliance determinations. This may include sharing Region 9's regulatory updates with staff and setting aside time for staff to network with staff from other agencies.

7.5 **Finding:** The BAAQMD's Engineering Division staff reported that supervisors are regularly available for one-on-one consultation, providing an opportunity for staff to discuss permitting issues.

Discussion: Throughout our interviews, Engineering Division staff usually reported meeting with supervisors on a weekly basis. Generally, communication in the Engineering Division between staff and supervisors is effective. Overall, staff seem to be very involved in permitting decisions.

Recommendation: The EPA commends the BAAQMD for empowering staff and in maintaining effective communication between staff and supervisors in the Engineering Division.

7.6 **Finding:** The District's Engineering Division faces staffing challenges, resulting in several issues including a permitting backlog of over 150 overdue open applications.

Discussion: The results of our interviews suggest that the District's Engineering and Compliance and Enforcement Divisions should increase focus on succession planning to better prepare for the event that staff leave the Divisions. In addition, the BAAQMD, like other agencies, experienced high turnover as a result of the COVID-19 pandemic, increasing the number of staffing vacancies. During our site visit, we also heard that the workload in the Engineering Division is high when compared to other Divisions within the District. This discrepancy in workload was cited as a reason for some of the Engineering Division's staffing challenges.

Impacts of high staff turnover rate include: (1) a workload situation in which certain key title V program tasks are or may not be completed in the timeframe required by District rules and the EPA's Part 70 program (see Finding 5.1 regarding the BAAQMD's permitting backlog), (2) a lack of institutional knowledge at the staff level within the District's permitting and compliance programs which can create delays in the issuance of title V permits and lead to inconsistent permitting determinations, and (3) a lack of adequate resources necessary to complete both existing and new workloads. After reviewing the draft report, the BAAQMD reported that the District is recruiting for seven Engineering Division vacancies for permitting staff who will conduct title V work. Additionally, the BAAQMD reported that the District is currently undergoing a management audit and is embarking on a District-wide strategic planning process to establish agency priorities and securing the necessary resources to meet the goals set over the next five years, including addressing the title V permitting backlog.

Recommendation: Based on discussions with the District, a next step to address staffing challenges should include a review of the present permitting program workload and an analysis of any upcoming workload change associated with addressing the title V permitting backlog, discussed in Section 5 of this report, to ensure that the permitting program can operate effectively and efficiently with adequate staffing.

7.7 **Finding:** The BAAQMD Engineering Division is generally grouped by industry sector, which helps the Engineering Division staff become experts on sector-specific issues.

Discussion: The BAAQMD Engineering Division includes five managers of the following sections: Organics Recovery and Title V, Refineries, Back-up Generators and Materials Handling, Toxics, and Technology Integration and Operations. This structure allows permit engineers to focus on specific industry sectors, such as refineries and landfills, which are generally subject to complex regulations. This source-specific expertise is invaluable to the District in title V program implementation.

Recommendation: The EPA commends the BAAQMD for designing the Engineering Division to produce experts on sector-specific issues. The EPA recommends the District develop a succession plan to ensure this sector-specific knowledge is retained.

8. Records Management

This section examines the system that the BAAQMD has in place for storing, maintaining, and managing title V permit files. The CAA provides that certain documents created pursuant to the title V permitting program, including the permit application, be made available to the public but also allows some protections for confidential information.[64] The BAAQMD has a responsibility to the public in ensuring that title V public records are complete and accessible.

In addition, the BAAQMD must keep title V records for the purposes of having the information available upon the EPA's request. 40 CFR 70.4(j)(1) states that any information obtained or used in the administration of a State program shall be available to the EPA upon request without restriction and in a form specified by the Administrator.

The minimum Part 70 record retention period for permit applications, proposed permits, and final permits is five years in accordance with 40 CFR 70.8(a)(1) and (a)(3). However, in practical application, permitting authorities have often found that discarding title V files after five years is problematic in the long term.

8.1 **Finding:** The District's permit record typically includes sufficient information used to inform permitting decisions.

Discussion: According to the BAAQMD, the District has digitized nearly all their files and any physical files are archived in a separate records center. During our site visit, most interviewees stated that they do not normally use physical copies, and if they do, it is due to personal preference. This conversion to digital files helped greatly during the COVID-19 pandemic.

We found during our evaluation that the District generally provides comprehensive information on its webpage to inform permit decisions, including all the District generated documents for the associated permit action; however, permit applications submitted by the applicants are not posted online. While in most cases, the District was able to provide a copy of the application when requested by the EPA, the District did have some trouble locating some of the applications if they were paper records.

Recommendation: The EPA commends the BAAQMD on its conversion to electronic files. We recommend the BAAQMD follow their file retention policy and make permit applications readily available to the public when informing its permit decisions by posting the applications on the

[64] This protection, however, is not absolute as the types of information that may be treated as confidential, and therefore withheld from the public, is limited. Specifically, "[t]he contents of a permit shall not be entitled to [confidential] protection under section 7414(c) of this title." CAA section 503(e), referring to section 114(c) of the CAA which provides protection of certain confidential trade secret information – but not emissions data – from disclosure. In addition to the title V program requirements, confidentiality is also addressed in the EPA's regulations governing the disclosure of records under the Freedom of Information Act (FOIA). Pursuant to those requirements, information which is considered emissions data, standards or limitations are also not entitled to confidential treatment. See *In the Matter of ExxonMobil Corporation, Baytown Refinery*, Order on Petition No. VI-2016-14 (April 2, 2018) (Baytown Order).

District's website.

8.2 **Finding:** The District has a written file retention policy. However, most staff interviewed were not aware of the District's record retention schedules.

Discussion: The BAAQMD has a written file retention policy for retaining official records; however, some staff are not aware of the District's record retention schedules. With the current file retention policy (see Appendix J), permit documents are generally maintained for the life of the facility and then an additional seven years. The title V compliance files are generally retained for seven years.

Recommendation: The EPA commends the BAAQMD for having a written file retention policy that complies with the federal regulation. We recommend that the District provide training to staff on its records management policies.

8.3 **Finding:** The BAAQMD tracks title V permit data in a remotely hosted legacy system that is being phased out, negatively affecting permit data retrievability and representing a risk to retention of permitting data.

Discussion: During our 2009 Evaluation,[65] the BAAQMD was working with a contractor to map the interrelationships among existing permitting and enforcement databases and develop a modern system to streamline the permitting process. During our site visit for this current evaluation, we learned that the District did not continue with development of the system referenced in our 2009 report to include title V permitting information.

During our evaluation we learned that the BAAQMD is using several databases to manage data for the Engineering and Compliance and Enforcement Divisions. The Engineering Division currently uses three relationship databases (Databank, IRIS, and Production System) that manage permits and data from permitted and registered facilities. Databank and IRIS are legacy systems that are being phased out in favor of Production System. During our site visit, the District reported that Production System does not include title V permitting information. Databank tracks statuses of permit applications and renewals while permit renewal fees (including title V renewal fees) are tracked by IRIS. Databank is a remotely hosted system and is increasingly difficult to find replacement parts for repairs. Additionally, Databank is driven by BASIC commands, so it is unusable by those who are unfamiliar with the commands.

The Compliance and Enforcement Division uses Airtable, an online platform, to track monitoring reports and NOV resolution, but it is not connected to the Engineering Division's databases. When the Compliance and Enforcement Division receives a report, the technician inputs the receipt data and assigns the report to an inspector, who adds review data to an input form. Previously, the Compliance and Enforcement Division used Microsoft Excel to track this

[65] See Finding 7.3 in the 2009 Evaluation.

data, but they started using Airtable in 2020. The Division is also in the process of adding facility data to the Production System.

As discussed elsewhere in this report, the BAAQMD reported that the District has identified a modern database, which is scheduled to be in place by October 2023. The District expects the new database to further improve title V permitting.

Recommendation: The EPA commends the BAAQMD for using an improved Compliance and Enforcement tracking database. However, the BAAQMD should develop a long-term plan to effectively manage and track its title V permitting data to ensure data is not lost.

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 the BAAQMD Responses

United States Environmental Protection Agency
Region 9 – Pacific Southwest
https://www.epa.gov/caa-permitting/caa-permitting-epas-pacific-southwest-region-9

Title V Program Evaluation

Questionnaire

Contents

A. Title V Permit Preparation and Content

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? **Y☒ N☐**

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

      The Air District requires a new compliance certification at the time of public notice if the current certification is more than one year old.

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

   We rely on the facility to certify compliance through a signed and dated certification statement form. Please see form here: https://www.baaqmd.gov/~/media/files/engineering/forms/title-v/mfr_cert_statement.pdf?la=en&rev=81135d7a2c36440782ced718009c3383

   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 District has addressed the compliance schedule question.

      In addition to instances of continuing non-compliance (which clearly merit a schedule of compliance), the Air District reviews the compliance history looking for patterns of recurring similar violations, which might indicate the need for a compliance schedule and/or other permit conditions. The evaluation and documentation of the basis and circumstances of a compliance schedule are discussed in the Statement of Basis document. Typically, permit conditions are imposed that specify the steps and timeline that the source must follow to come into compliance. An example of a Title V permit with compliance schedules that have been issued since 2005 is the renewal permit for Tesla Motors Inc.

      TV permit with schedule of compliance:
      https://www.baaqmd.gov/~/media/files/engineering/title-v-permits/a1438/a1438_-03_2017_renewal_final_permit_02-pdf.pdf?la=en&rev=6118edc1e2984996a8779a91a883046d
      Corresponding SOB:
      https://www.baaqmd.gov/~/media/files/engineering/title-v-permits/a1438/a1438e0459_12_2016_renewal_proposed_sob_03-pdf.pdf?la=en&rev=e21d08654966489e8cc16154b81da186

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

   We have developed permit and statement of basis templates that are continually updated by the Senior Engineer dedicated to the Title V program. This insures that permits contain current federal, state, and Air District requirements. The templates decrease processing time by providing a standard, consistent format for use by the permit engineers. We have also sought ways to coordinate enforcement efforts with Title V permit activity, so that the Title V permit may better serve as a tool responsive to significant compliance problems.

We have also allocated a minimum number of hours per week to concentrate on Title V permits. NSR permits are to include either language for the Statement of Basis and/or permit revisions in the appendices to allow for faster incorporation into the Title V permits.

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

   All draft permits are routed through the Senior Engineer dedicated to Title V program to ensure consistency. Draft initial and renewal Title V permits are circulated internally to the Air District Compliance and Enforcement and Technical Services Divisions and the permitted facility for comment and review. Proposed permits and permit revisions are circulated through the Engineering and Legal Divisions and Executive Management prior to issuance. In addition, we utilize Title V checklists that allow permit reviewers to see which parts of the permit and statement of basis have been reviewed by other staff and allows the reviewer to track what parts they have reviewed.

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

   We do not include equipment that is exempt from Air District permit requirements in the Title V permit, unless it is significant (i.e., PTE greater than 2 tpy for any regulated air pollutant, or 400 lb./yr. for any HAP). We also have identified generally applicable requirements in a single table, rather than listing them for each piece of subject equipment. In addition, sources with common applicable requirements are grouped together whenever possible. Finally, as part of the application process, the permittee can request a permit shield from non-applicable requirements or from monitoring, recordkeeping, or reporting requirements for less stringent requirements.

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

      We have issued some permits with subsumed monitoring, recordkeeping, or reporting requirements. This is not commonly done and is only included at the request of the facility as described above. Streamlining is not common in District Title V permits.

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

      Streamlining of multiple overlapping applicable requirements can simplify the permit and reduce the burden of demonstrating and verifying compliance. Streamlining analyses are often difficult or impractical to complete, however, due to differences in the form of the standards and/or differences in monitoring, test methods, recordkeeping, and reporting requirements.

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

   Strengths: Provides comprehensive listing of applicable requirements, monitoring, and source test methods. The applicable requirements can be found directly for a given piece of equipment. The statement of basis is comprehensive, and the format allows for a thorough explanation of the basis of applicability determinations and any monitoring decisions. Weakness: Some permits for complex facilities are long and

difficult to navigate. Occasionally, this has resulted in errors as permits are revised. Air District staff is considering instituting format changes that would merge separate tables, thereby reducing permit length.

7. How have the District'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.

   In the case of the initial Title V permits issued by the Air District, the Air District followed the letter of February 19, 1999, from Matt Haber of EPA Region IX to David Dixon of the California Air Pollution Control Officers Association (CAPCOA) regarding the information required in the statement of basis. As a result of an EPA order issued on May 24, 2004, regarding an appeal of the initial Los Medanos Energy Center permit filed with EPA Region IX by Our Children's Earth (OCE) and Californians for Renewable Energy (CARE), the Air District developed a statement of basis that addressed Title V issues more directly. For example, the current statement of basis documents and explains changes to the permit so that the public can understand those changes and their potential impacts. The current statement of basis also discusses applicable requirements and their corresponding monitoring as well as complex applicability determinations such as CAM. As a result of these changes, the current statement of basis is more robust than earlier versions.

8. Does the statement of basis explain:

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

      Section C.VII of the statement of basis explains the rationale for monitoring.

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

      The Statement of Basis does not provide detailed explanations of simple applicability determinations and exemptions where the determination can be made by inspection. However, the statement of basis has detailed explanations of all complex applicability determinations.

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

      The statement of basis does provide explanations of any streamlining. Any streamlining is normally associated with use of the permit shield.

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

   The Air District maintains detailed templates that contain standard language and content for the statement of basis for initial, renewal and revised permits.

   a. Do you have written policy or guidance on practical enforceability? **Y☐ N ☒**

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.)

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

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

In some cases, pending NSR applications can be delayed significantly by CEQA issues under the control of the local governmental entity that assumes lead agency responsibilities. Also, the pending NSR applications may require source testing, subsequent review, and approval of the final source test report prior to issuance of the NSR Permit to Operate.

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

The negotiation of terms for compliance schedules has in some cases increased the processing time for initial and renewal Title V permits.

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

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

The competing priorities of renewing and revising existing Title V permits has created challenges in terms of the timely issuance of initial permits for new Title V facilities.

f. Awaiting EPA guidance **Y☒ N ☐**

The reopening of the permits for the refineries was significantly delayed because EPA headquarters and EPA Region IX did not agree on monitoring for applicability of H2S monitoring at the refinery flares.

11. Any additional comments on permit preparation or content? *No*

B. General Permits (GP)

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

    a. If no, go to next section

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

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? **Y☐ N ☐**

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

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

    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:

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

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

5. Any additional comments on general permits?

C. Monitoring

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

   The Part VII tables of Air District Title V permits include a listing of each applicable limit and the corresponding monitoring requirement and method. When there is no monitoring required for a given limit, the statement of basis must include a justification for no monitoring. If monitoring is necessary to demonstrate compliance, it is instituted under the Title V permitting process. The routing of all draft Title V permits through the Senior Engineer dedicated to the Title V program ensures that this requirement is met. The Air District reviews all monitoring for sufficiency, even though our understanding of EPA policy is that review of existing monitoring is not required under Title V. In all cases, the Air District balances the emission reduction benefits of additional monitoring against the cost of that monitoring.

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

      Guidance has not been developed for all types of monitoring, but the Air District does use the guidance on periodic monitoring developed by the CAPCOA/ARB/EPA Region IX Title V Subcommittee for various types of common sources.

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) **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?

   We have imposed monitoring when the underlying rule contains no monitoring of a periodic nature. This does not occur often. An example would be the requirement for periodic visual inspection of particulate sources for compliance with BAAQMD Regulation 6, Rule 1. We have also required periodic monitoring of pressure drop for baghouses to ensure compliance with Regulation 6, Rule 1. We believe that in some cases this monitoring may have resulted in better source compliance.

4. What is the approximate number of sources that now have CAM monitoring in their permits?
   Less than 5.

   Please list some specific sources.

   TV permit with CAM plan:
   https://www.baaqmd.gov/~/media/files/engineering/title-v-permits/a0017/a0017_05_05_2020_renewal_final_permit__02-pdf.pdf?la=en&rev=ac0602f735bb4fbd89ff945f1e395d47

Statement of basis:
https://www.baaqmd.gov/~/media/files/engineering/title-v-permits/a0017/a0017_05_05_2020_renewal_final_sob__03-pdf.pdf?la=en&rev=7ff022a887704478a09e5c760b6aaa7c

TV Permit with CAM Plan:
https://www.baaqmd.gov/~/media/files/engineering/title-v-permits/a0062/a0062_04_25_2018_renewal_final_permit_02-pdf.pdf?la=en&rev=28fb820bf6b841fa985215401fa80014
Statement of basis:
https://www.baaqmd.gov/~/media/files/engineering/title-v-permits/a0062/a0062_1_26_2018_renewal_proposed_sob_04-pdf.pdf?la=en&rev=2d59f2a16b6e4ff1a90679ec34329f43

5. Has the District ever disapproved a source's proposed CAM plan?

No, our experience with the development of a CAM plan is that it has been a collaborative process with a shared goal of coming to an agreement.

D. Public Participation and Affected State Review

Public Notification Process

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

   We utilize a variety of major newspapers of general circulation throughout the Air District, but we try to use a newspaper that is circulated in the general vicinity of the Title V facility.

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? **Y☒ N ☐**

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

      We have only done so once. It was for a controversial facility, Lehigh Southwest Cement Company, facility A0017.

   b. How do you determine which publications to use?

      We select the largest newspaper in the general vicinity of the Title V facility.

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

      We post all proposed and final Title V permits, statement of basis documents and public notices on the Air District website. This is a very cost-effective approach to public notification. Notification of all Title V actions are also sent to all persons subscribed on the Air District list server via email. We use the California Newspaper Service Bureau to publish the notices in newspapers.

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

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

      A request can be made by email or postal mail.

   c. How does the list get updated?

      An air quality technician maintains the list of interested parties for Title V permit actions.

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

We do not have lists dedicated to specific facilities. However, a name is not removed from our interested parties list unless they request to be removed or the address is no longer valid.

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

Copies of the public notice for proposed Title V actions. For minor revisions or administrative amendments, we send a copy of the transmittal letter that is sent to EPA. We only provide hard copies of proposed permits and statement of basis documents upon request since we post all Title V documents on the Air District website.

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

On occasion, we have public meetings to discuss the proposed TV permits for high public interest facilities.

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

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

In general, public notices in newspapers are not that effective since few people read the classified section of the newspaper unless they are looking for a particular public notice. Posting the public notice on the Air District website (per current practice) probably reaches more concerned members of the public and public advocates. Although federal regulations now allow e-noticing, Air District Regulation 2, Rule 6 that governs Air District Title V permitting still requires newspaper publishing. When Regulation 2, Rule 6 is amended in the future, the e-noticing option will be added.

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

Typically, the public notices have been published in English only. If we have a public meeting to discuss a proposed permit, we provide translated documents as dictated by the demographics of the area.

Similar to our practice of providing translations for public notices in our Overburdened Communities in our NSR program (see Environmental Justice Resource section), we are also working on policies and procedures to provide similar translations for theTitle V public notices. Notices will be translated into Chinese, Spanish, Tagalog, and Vietnamese. These languages were determined to be needed based on the population of non-English speakers.

Public Comments

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

The public has requested an extension of the public comment period only a few times in the history of the program. For example, during the proposal of the initial refinery Title V permits.

a. Has the District ever denied such a request? **Y☐ N ☒**
b. If a request has been denied, what were the reason(s)?

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.
Y☐ N ☒

Improvements have not been suggested since the last audit.

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

Approximately 15% of the initial permits. Less than 1% of subsequent permit revisions and renewals have garnered public comments.

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

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

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

Less than 10% are changed. The content of the permit does not change significantly. However, the statement of basis may be revised to include more background and explanation.

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

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

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

If the changes to the permit are substantive in nature or would be considered a significant revision to the permit, then the proposed permit would require re-noticing.

EPA 45-day Review

16. What permit types do you send to the EPA for 45-day review?

Re-opening, minor revision, significant revision, initial, and renewal.

17. 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? (aka "concurrent review) **Y☒ N ☐**

a. What could cause the EPA 45-day review period to restart (i.e., if public comments received, etc)?

If substantive changes are made to the permit because of public comments, then the 45-day EPA review period would be restarted to give EPA sufficient review time.

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

The public notice describes the EPA review process and refers the reader to an EPA website that indicates when EPA's review period for a given permit action will end.

c. If the District does concurrent review, is this process a requirement in your title V regulations, or a result of a MOA or some other arrangement?

Air District Regulation 2, Rule 6 is silent on sequential vs concurrent review. EPA has agreed to concurrent review provided that the 45-day EPA review period ends after the 30-day public comment period has ended, so that EPA has time to review any public comments. It should be noted that the Air District utilizes sequential review (I.e., public comment followed by EPA review) for permits that are likely to receive numerous comments such as refinery Title V permits.

Permittee Comments

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

We send the draft initial or renewal permit and SOB to the facility for their review and comment prior to formal proposal of the permit for public comment. This allows the facility to comment on any errors or changes in permitted source status and minimizes the number of potential comments submitted by the facility during the public notice period.

19. Do permittees provide comments/corrections on the permit during the public comment period? **Y☒ N ☐**

Permittees do not typically provide comments/corrections during the public comment period unless there are issues that have not been resolved during the draft permit review period described above.

a. Any trends in the type of comments?

Comments are typically administrative in nature, or they relate to regulation applicability or monitoring requirements.

b. 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?

If the comments relate to contentious issues, such as applicability or monitoring, then they often delay permit issuance.

Public Hearings

20. What criteria does the District 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)?

There must be enough people requesting a public hearing to justify the expenditure of the necessary Air District time and resources. Some consideration is also given to the substance of the comments made on the proposed permit.

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

When the community has expressed ongoing interest in the facility, then we have planned public hearings prior to receiving a request for one. For example, we have done this in the case of the initial, and some significant revisions, to refinery Title V permits and to the initial and renewal permits for Lehigh Southwest Cement Company.

Availability of Public Information

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

In accordance with Air District Public Records Request policies, we charge for copies of permit-related documents other than the proposed and final permits and statement of basis documents which are posted on the District website.

a. If yes, what is the cost per page?

We charge $0.25 per page for hard copies of documents. However, this rarely occurs because most record requestors are capable of receiving electronic copies of documents.

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

We provide copies of proposed permits and statement of basis documents to interested members of the public via the Air District website of via e-mail at no cost. The Air District waives the copying fee for non-profit organizations on a case-by-case basis.

c. Do your title V permit fees cover this cost? **Y☐ N ☒** 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*?*

The Air District has a public records request process in place that allows third parties to request access to public documents for a permitted facility. They must make a formal public records request through the Air District website. See https://www.baaqmd.gov/contact-us/request-public-records.

Proposed permits and statement of basis documents for Title V actions are posted on the Air District website. The semi-annual monitoring reports are also posted on the Air District website. The public can also subscribe to a District e-mail notification list that summarizes all Air District Title V actions.

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

We no longer provide paper copies at public libraries or field offices. The public must come to Air District headquarters at 375 Beale Street to view and/or obtain paper copies of Title V documents. Otherwise, they can obtain documents via email or download from the Air District website. As stated earlier, all proposed TV permits and statement of basis documents are available on the Air District website.

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

The response time depends upon the nature of the request. The Air District administrative code states that the public records must be provided within a "reasonable period of time". When information is requested to provide comments, the Air District makes every effort to provide the information as early as possible to allow time for review during the comment period.

Requests may be fulfilled quickly provided that the facility has provided a redacted copy of the requested documents in advance to protect trade secrets (this is required by Air District regulations for new permit submittals). Requests for historical documents may take longer though the Air District, as previously mentioned, makes every effort to respond quickly when the request is relevant to issues raised in the comment period.

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

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

It depends upon the nature and extent of the records request. If fulfilling the request involves extensive research and/or archived records, then it may affect permit issuance.

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

All proposed and final TV permits, statement of basis documents, transmittal letters, public notices, EPA/public comments and Air District responses to comments are posted on the Air District Title V permit page. Semi-annual monitoring reports for each Title V facility are also posted. Title V permit documents are available here: https://www.baaqmd.gov/permits/major-facility-review-title-v/title-v-permits

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

Documents are posted as soon as they are issued.
Yes, see Major Facility Review page:
https://www.baaqmd.gov/permits/major-facility-review-title-v

b. Do you provide public commenters with final Title V permit documents? *No, final documents are only posted on the Air District website and on the EPA CDX.*

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

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

The public notice describes how the public can petition EPA during the 60-day period. See example here:
https://www.baagmd.gov/~/media/files/engineering/title-v-permits/a0901/a0901_2021_renewal_proposed_pn_02_signed-pdf.pdf?la=en&rev=abebd4219d5146c2afa750118cef1966

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

Please see the Title V pamphlet posted to the Air District website:
https://www.baagmd.gov/~/media/Files/Engineering/Title%20V/in_your_community.ashx?la=en&la=en

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

The Air District has a Public Participation Plan. See webpage here:
https://www.baagmd.gov/plans-and-climate/public-participation-plan
The plan is available here:
https://www.baagmd.gov/~/media/files/communications-and-outreach/community-outreach/public-engagement/ppp_final_121713.pdf?la=en

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

a. Where are they in the organization?

The Air District has 10 positions in the Communications Division and 15 positions in the Community Engagement Division.

b. What is their primary function?

These staff are dedicated to informing the public, public outreach and coordinating public meetings. They educate the public on the goals, functions, and programs of the Air District.

Affected State Review and Review by Indian Tribes

32. How do you notify tribes of draft permits?

There are no affected states or Federally recognized Indian tribes within Air District boundaries that require notification per Part 70.

33. Has the District ever received comments on proposed permits from Tribes? *No*

34. Please provide any suggestions for improving your notification process. *No*

35. Any additional comments on public notification? *No*

E. Permit Issuance / Revision / Renewal

Permit Revisions

1. For which types of permit modifications do you follow a list or description in your regulations to determine the appropriate process to follow: **(Check all that apply)**

   ☒ Administrative amendment?
   ☐ Section 502(b)(10) changes?
   ☒ Significant and/or minor permit modification?
   ☒ Group processing of minor modifications?

2. Approximately how many title V permit revisions have you processed for the last five years? *100*

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

Significant:	10%
Minor:	53%
Administrative:	37%
Off-permit:	0%
502(b)(10):	0%

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

   a. A significant permit revision? Average: *1227 days, Median: 56 days*

   b. A minor revision? Average: *1394 days, Median: 1,276 days*

4. How common has it been for the District 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.

   Over the last five years, 51% of Administrative amendments have been issued within 60 days, 30% of Significant Revisions have been issued within 18 months, and 0% of minor revisions have been issued within 90 days.

   However, the Air District requires the submittal of a Title V revision application at the same time as the corresponding new source review (NSR) application. Therefore, if the processing of the NSR application is delayed due to compliance issues or other reasons, the corresponding TV application will also be delayed. Note that Air District regulations allow for a final decision on the NSR application 180 days after the application is complete for major facilities.

   *Please also note that Air District Regulation 2, Rule 6 only requires that minor revisions be issued within 15 days of the end of the 45-day EPA review period. 40 CFR Part 70 requires that minor revisions be issued within the **later** of 90 days from receipt date or 15 days of the end of the 45-day EPA review period.*

Many of the extended application processing times can be attributed to the petroleum refineries because they submit numerous Title V revision applications. Rather than issue a revised permit for each revision application, it is often a more efficient use of Air District resources to group several of the revision applications together and issue them as one revised permit. Because Title V facilities include major facilities with numerous new source review applications, these facilities often submit many revision applications. To assist the Air District in prioritizing work, these facilities typically will identify higher priority Title V applications. Facilities will normally give significant revisions higher priority since these applications represent potential permit violations if these conditions/requirements are not changed in the Title V permit prior to exceedances and only take effect after the EPA review period is over. Minor revisions take effect at the beginning of the EPA review period, and the urgency to process the minor revisions is therefore less.

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

   We utilize concurrent EPA and public review for most significant revisions. We have a standard template statement of basis for permit revisions that contains standard language that has been previously reviewed and approved by Air District Legal Division staff.

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

   The Title V permit technician, a dedicated position for Title V, tracks the routing of revision applications through the review and approval process using email.

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? **Y☒ N ☐ If so, please provide a copy.**

   Volume II, Part 3 of the Air District Manual of Procedures (MOP) discusses Title V permit processing and includes a discussion of permit revision types. Please see:
   https://www.baaqmd.gov/~/media/files/records/mop/vol-2/vol2_pt3.pdf?la=en&rev=d70c27b6180444f7bb723847d0921c92

8. Do you require that 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? **Y☒ N ☐**

   The 2-page TV application form entitled Stationary Source Summary is required for all Title V applications and includes a section where the responsible official designates the type of permit action and describes the proposed changes.
   Page 1 of Stationary Source Summary form
   https://www.baaqmd.gov/~/media/files/engineering/forms/title-v/stationary_source_summary_p1.pdf?la=en&rev=2895aeb925ba4c87a6c71f4d3d2ec9b7

Page 2 of Stationary Source Summary form
https://www.baaqmd.gov/~/media/files/engineering/forms/title-v/stationary_source_summary_p2.pdf?la=en&rev=d64b3a40a3d7479a952be932616e2a2c

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 includes a short narrative description of the proposed revisions. The proposed changes to the permit are shown in strikeout/underline format, and the statement of basis document describes the proposed changes in detail.

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

    The public notice states that only the proposed permit revisions are open to comment.

Permit Renewal or Reopening

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

    a. If yes, what are the differences?

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

    Many of the applicability determinations are still valid for the renewal so they can be "re-used" in the statement of basis. If a given applicable requirement has not been amended since the original permit was issued and the subject equipment has not changed, then the citations in the permit are still valid and do not need revision. Overall, if there has been little NSR permit activity at the Title V facility and few regulation revisions since the initial permit issuance, the renewal will take less time than the processing of the initial Title V permit.

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

    We send a reminder email to the permit holder several months prior to the renewal application due date with a copy of the current TV permit and the requisite TV application forms. An example email is attached to this questionnaire as attachment 1.

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

    Nearly 100% of renewal applications have been timely and complete. There have been 2 instances where facilities submitted their Title V renewal application late.

16. How many complete applications for renewals do you presently have in-house ready to process? *53*

a. 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? **Y**☒ **N** ☐

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

F. Compliance

Deviations

1. Deviation reporting:

   a. Please describe which deviations you require be reported prior to the semi-annual monitoring report?

      All instances of non-compliance with the permit must be reported in writing to the Air District's Compliance and Enforcement Division within 10 calendar days of the discovery of the incident. Within 30 calendar days of the discovery of any incident of non-compliance, the facility must submit a written report including the probable cause of non-compliance and any corrective or preventative actions.

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

      Deviations are reported to the Air District via email or mail. We do not accept the reporting of deviations by phone.

   c. If yes, do you require a follow-up written report? **Y☐ N ☐** If yes, within what timeframe? *N/A*

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

      The Air District has not required certification of deviation reports by the responsible official to ensure a prompt and timely 10-day report by the reporting facility. A facility contact who is responsible for the operation of specific processes or most knowledgeable about the non-compliance issue, are generally the ones submitting the signed, 10-day deviation reports on behalf of the facility.

      i. Do you require certifications to be submitted with the deviation report? **Y☐ N ☒**

      ii. If not, do you allow the responsible official to "back certify" deviation reports? **Y☐ N ☒**

      iii. If you allow the responsible official to "back certify" deviation reports, what timeframe do you allow for the follow-up certifications (e.g., within 30 days; at the time of the semi-annual deviation reporting)? *N/A*

2. How does your program define deviation?

   Deviations are defined as all instances of non-compliance with the Title V permit, state and federal regulations. Deviations must be reported in writing to the Air District's Compliance and Enforcement Division within 10 calendar days of the discovery of the incident. Within 30 calendar days of the discovery of any incident of non-compliance, the facility shall submit a written report including the probable cause of non-compliance and any corrective or preventative actions.

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

   Facilities are also required to report instances of non-compliance with state and federal regulations.

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

   ☒ Excess emissions excused due to emergencies (pursuant to 70.6(g))
   ☐ Excess emissions excused due to SIP provisions **(cite the specific state rule)**
   ☒ Excess emissions allowed under NSPS or MACT SSM provisions
   ☒ Excursions from specified parameter ranges where such excursions are not a monitoring violation (as defined in CAM)
   ☒ Excursions from specified parameter ranges where such excursions are credible evidence of an emission violation
   Failure to collect data/conduct monitoring where such failure is "excused":
      ☒ During scheduled routine maintenance or calibration checks
      ☒ Where less than 100% data collection is allowed by the permit
      ☒ Due to an emergency
   ☐ Other? **Describe.**

5. Do your deviation reports include:

   a. The probable cause of the deviation? **Y☒ N ☐**
   b. Any corrective actions taken? **Y☒ N ☐**
   c. The magnitude and duration of the deviation? **Y☒ N ☐**

   Facilities will report the initial findings of violations in a deviation report, however these findings could change following further investigations by staff and the facility.

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

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

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

A facility contact, responsible for operation of specific processes or most knowledgeable about the non-compliance issue, may submit signed, 10-day deviation reports on behalf of the facility.

Compliance Reports

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

   a. Deviation reports? **Y☒ N ☐**
   b. Semi-annual monitoring reports? **Y☒ N ☐**
   c. Annual compliance certifications? **Y☒ N ☐**

Compliance reports, including deviations, semi-annual monitoring reports, and annual compliance certifications are entered into a database, processed by assigned personnel for distribution and evaluation, and tracked for timely investigations. Investigations are conducted by field inspectors with the assistance of engineers when appropriate. Results of the compliance determinations are routed through the Compliance

and Enforcement Operations Section and to the Air District's Legal Division to pursue appropriate legal action/settlement.

10. Please identify the **percentage** of the following reports you review:

    a. Deviation reports *100%*
    b. Semi-annual monitoring reports *100%*
    c. Annual compliance certification *100%*

11. Compliance certifications

    a. Have you developed a compliance certification form? **Y☒ N ☐** If no, go to question 12.

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

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

        Compliance is based on whether compliance is continuous or intermittent.

        iii. Do you require sources to use the form? **Y☐ N ☒** If not, what percentage do? *100%*

        The Air District requires compliance certifications to include a list of each applicable requirement, the compliance status, whether compliance was continuous or intermittent, the method used to determine compliance, and any other specific information required by the Title V permit.

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

12. Is your compliance certification rule based on:

    a. The '97 revisions to part 70 - i.e., is the compliance certification rule based on whether <u>the compliance monitoring method</u> was continuous or intermittent; ☐
    OR
    b. The '92 part 70 rule - i.e., is the compliance certification rule based on whether <u>compliance</u> was continuous or intermittent? ☒

Excess Emissions

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

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

b. Provide injunctive relief? **Y☐ N ☐**
c. Excuse non-compliance? **Y☐ N ☐**

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

a. Provide relief from penalties? **Y☐ N ☐**
b. Provide injunctive relief? **Y☐ N ☐**
c. Excuse noncompliance? **Y☐ N ☐**

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

a. The emergency defense provision? **Y☐ N ☒**
b. The SIP excess emissions provision? **Y☐ N ☒**
c. NSPS/NESHAP SSM excess emissions provisions? **Y☒ N ☐**

16. Any additional comments on compliance?

The Compliance & Enforcement Division is in the process of streamlining and clarifying the required Title V report submissions to the Air District and move towards an electronic reporting process. This includes reporting Title V Annual Certification Reports, Semi-Annual Monitoring Reports, Title V Deviations and Reporting Compliance Activities. We are approximately 80% complete with these efforts and plan to send out a compliance advisory to Title V facilities to notify them of the changes and improvements. We are also taking the opportunity to clarify reporting requirements.

G. Resources & Internal Management Support

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

   a. If so, what are they?
   Title V applications are assigned to nearly all new source review permit engineers. Competing demands include the following:

   - *Conducting health risk assessments pursuant to Air District Regulation 2, Rule 5 "New Source Review of Toxic Air Contaminants" and Regulation 11, Rule 18 "Reduction of Risk from Air Toxic Emissions at Existing Facilities"*
   - *Processing New Source Review applications*
   - *Help with annual permit renewal (update inventory data and invoices)*
   - *Reviewing refinery emissions reporting submitted pursuant to District Regulation 12, Rule 15 "Refining Emissions Tracking"*
   - *Processing permit renewals*
   - *Database development and maintenance*
   - *Rule Development*
   - *Special projects*

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? **Y☐ N ☒**

3. How is management kept up to date on permit issuance? **Y☒ N ☐**

   Monthly Title V status reports for renewal applications, pending application actions, and significant revisions are generated by the Title V team and sent to management.

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

   The Title V team (TV Senior engineer and TV technician) has monthly Title V status meetings with assigned permit engineers and their supervisors to discuss renewal applications and any obstacles or issues related to the proposed permit and statement of basis.

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

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

   The annual fees charged to Title V facilities are based on facility emission rates, the number of permitted sources, and the number of CEMs. Application fees are fixed depending on the type of application and the number of sources that are involved.

   b. What is your title V fee?
   See Regulation 3, Schedule P:

https://www.baaqmd.gov/~/media/dotgov/files/rules/reg-3-fees/2022-amendment/documents/20220615_finalrule_rg0300-pdf.pdf?la=en&rev=6889ed140bb14c1dacee04a94e7652fc

c. Do you have sources that refuse to pay their title V fee? **Y☐ N** ☒ How do you approach these situations?

6. For non-title V sources, how do you track when a non-title V source becomes a major source?

We do not actively monitor the potential to emit for non-Title V facilities with respect to the major source thresholds. Typically, source testing results will lead to further investigation into the facility PTE.

7. How do you track title V expenses?

The Air District uses employee timesheets with accounting billing codes that specify Title V-related work to track the amount of time that permit engineers and other staff spend on Title V program activities. The Engineering Division also tracks the expenditures through Program 506, our Title V program. Other divisions use Bill Code 80 and their specific programs such as activity in Compliance and Enforcement and Source Test.

8. How do you track title V fee revenue?

Title V revenues are tracked separately from all other revenues collected by the Air District. We have a dedicated general ledger account for that purpose.

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

There are 19 engineers that participate in writing title V permits. There are 6 additional vacant FTE positions that may write title V permits. All vacancies are in active recruitment at this time.

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

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

Main activities include processing New Source Review applications, performing health risk assessments, and processing permit renewals. Permit writers may spend up to approximately 10% of their time processing Title V applications.

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

Air District staff track their time spent on Title V activities using program and bill codes on their timesheets.

11. Are you currently fully staffed? *No*

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

There are currently 82 Title V facilities and 19 Title V permit writers. There are currently 297 open Title V applications in house. This includes administrative amendments, minor revisions, significant revisions, initial, and renewal applications.

13. Describe staff turnover.

    The Engineering Division has 38 filled FTE positions in the engineer classification. 16 of those positions have less than 5 years of experience. Another 8 to 10 positions have years of service that give a high likelihood of retiring in the next 1 to 3 years.

    a. How does this impact permit issuance?

    Newer staff require additional training and mentoring. As they gain experience, they will be able handle various permitting situations including Title V. More senior staff handle more complex permitting assignments and work more efficiently.

    b. How does the permitting authority minimize turnover?

    The Air District offers competitive salaries and benefits, and by providing a quality work environment with promotional opportunities.

14. Do you have a career ladder for permit writers? Y☒ N ☐ If so, please describe.

    The career ladder for permit writers is as follows: Permit writers start out in the job classification Air Quality Engineer I or II. Engineers may compete for position upgrades to Senior Air Quality Engineer and/or Supervising Air Quality Engineer.

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

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

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

    Division-wide training on effective permit writing occurs on a periodic basis. Title V training is primarily given by the permit writer's supervisor and the Title V Senior Engineer. It is not general but instead focuses on the specific issues that arise during the processing of assigned applications. Staff meetings may also be used to discuss Title V permit preparation.

18. Does your training cover:

    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 ☐**

19. Please describe anything that EPA can do to assist/improve your training.

20. How has the District organized itself to address title V permit issuance?

    The Air District permit engineer that regularly handles NSR applications and other issues for a facility also has the responsibility for writing the Title V permits for that facility. Due to the large number of permitted facilities that the Air District handles, these permit engineers are members of three different Sections within the Engineering Division. Facility assignments are generally organized so that similar facilities (e.g., refineries, landfills) are handled within a single Section. To promote consistency, the Air District has a Senior Engineer that is dedicated 100% to the review, maintenance, and processing of all Title V permits. A dedicated air quality technician, Supervising Engineer, and an Engineering Manager are also responsible for the program. Other Divisions within the Air District, including Compliance and Enforcement, Technical Services, and Legal, also provide input on Title V permits.

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

    The biggest roadblock to Title V permit issuance is competing demands from new source review applications and other new initiatives that are implemented by Engineering.

Environmental Justice Resources

22. Do you have Environmental Justice (EJ) legislation, policy or general guidance which helps to direct permitting efforts? **Y☐ N ☒** If so, may EPA obtain copies of this information?

    We do not have any EJ guidance that directs permitting efforts. However, the Air District does provide guidance to assist cities and counties with the implementation of EJ best practices.
    https://www.baaqmd.gov/plans-and-climate/planning-for-environmental-justice-sb-1000

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

    Suma Peesapati, Environmental Justice and Community Engagement Officer

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

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

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

    Screening for EJ issues is done on an ongoing basis through Air District Regulation 2, Rules 1 and 5, Regulation 11, Rule 18, and implementation of the State Air Toxics "Hot Spots" (ATHS) program. Effective July 1, 2022, facilities located in overburdened communities are identified as such pursuant to Regulation 2-1-243. The Air District uses the California Communities Environmental Health Screening Tool

(CalEnviroScreen), Version 4.0,[1] and a buffer zone to identify overburden communities.[2] Permit applications for projects located in overburdened communities are subject to a more stringent project cancer risk limit (6 in a million instead of 10 in a million) and projects located in overburdened communities that are subject to risk assessment requirements must undergo a public notification process. The Air District considers all comments on projects located in overburdened communities before making a final decision on the project.

Regulation 11, Rule 18 requires risk reductions at a facility if health impacts from all stationary sources at the facility exceed this rule's stringent risk action levels: 10 in a million-cancer risk, 1.0 chronic hazard index, or 1.0 acute hazard index. The Air District is conducting health risk assessments now for about 30 facilities with the highest potential for elevated health risks with scheduling priority given to facilities located in overburdened or impacted communities. Many of these sites are also Title V facilities. Upon finalization of the health risk assessment results, any facility that has a health risk above a risk action level will be required to reduce health impacts. Both the health risk assessment process and the risk reduction plan approval process include opportunities for public involvement. Regulation 11, Rule 18 works in concert with the California Air Toxics Hot Spots (ATHS) program. Under the ATHS program, the public must be notified of any health risks that exceed the Air District's public notification thresholds, which are the same as the Regulation 11, Rule 18 risk action levels, and any significant health risks (10 times the risk action levels), must be reduced to less than significant levels.

1 *An overburdened community is defined as any census track scoring 70th percentile or higher per CalEnviroScreen 4.0 plus a 1000-foot buffer zone around any high scoring census tracks. CalEnviroScreen uses 12 pollution burden indicators and 9 population characteristic indicators to determine the percentile score for each census track. More information about CalEnviroScreen is available here: https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40.*

2 *The Air District has developed an interactive map showing all of the overburdened communities in the Bay Area: https://www.baaqmd.gov/about-air-quality/interactive-data-maps*

H. Title V Benefits

1. Does your staff implementing the title V program generally have a better understanding of:

   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? **Y☒ N ☐**

2. In issuing initial title V permits:

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

      Older grandfathered sources often have no monitoring requirements in place.

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

      The Air District has a permit processing handbook and a BACT Guideline that are regularly updated to ensure consistent permitting within source categories. These documents are maintained on the Air District website.

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

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

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

	Never	Occasionally	Frequently	Often
a. NSPS requirements (including failure to identify an NSPS as applicable)	❑	X	❑	❑
b. SIP requirements	❑	X	❑	❑

c. Minor NSR requirements
(including the requirement to obtain a permit) ❑ X ❑ ❑

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

5. Do you see a difference in compliance behavior on the part of sources that have to comply with the title V program? **(Check all that apply.)**

☒ Increased use of self-audits?
☒ Increased use of environmental management systems?
☒ Increased staff devoted to environmental management?
☒ Increased resources devoted to environmental control systems (e.g., maintenance of control equipment; installation of improved control devices; etc.)?
☒ Increased resources devoted to compliance monitoring?
☒ Better awareness of compliance obligations?
☐ Other? Describe.

6. Does implementation of the title V program improve other areas of your program? **(Check all that apply.)**

☐ Netting actions
☒ Emission inventories
☐ Past records management (e.g., lost permits)
☒ Enforceability of PTE limits (e.g., consistent with guidance on enforceability of PTE limits such as the June 13, 1989 guidance)
☒ Identifying source categories or types of emission units with pervasive or persistent compliance problems; etc.
☒ Clarity and enforceability of NSR permit terms
☒ 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)
☐ Emissions trading programs
☒ Emission caps
☐ Other (describe)

7. If yes to any of the above, would you care to share how the title V program improves other aspects of your air program? (e.g., increased training; outreach; targeted enforcement)?

The source testing of facilities to determine PTE for Title V applicability has led to a better understanding of the facility's operations and emissions.

Determining the regulatory basis for each permit condition has resulted in a closer examination of the necessity and/or enforceability of many permit conditions.

8. 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). **Y☒ N ☐ If yes, describe.**

All NSR permit conditions now include a citation of its regulatory basis. There has been an increased emphasis on monitoring requirements for all facilities.

9. 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.

   For Title V facilities, the NSR permit evaluations have a more extensive discussion of monitoring and applicable federal requirements in anticipation of the drafting of the statement of basis for the associated Title V permit revision.

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

11. Is title V fee money helpful in running the program? That is, does it help you to provide: **(Check all that apply.)**

    ☒ Better training?
    ☒ More resources for your staff such as CFRs and computers?
    ☒ Better funding for travel to sources?
    ☒ Stable funding despite fluctuations in funding for other state programs?
    ☒ Incentives to hire and retain good staff?
    ☒ Are there other benefits of the fee program? Describe.

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

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

    The Air District Title V permit provides a comprehensive list of all applicable requirements and monitoring, so it serves as a valuable resource to Air District enforcement personnel and the facility.

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

The most obvious and tangible benefit has been the institution of enhanced monitoring for grandfathered sources that had little or no monitoring in place prior to the implementation of the Title V permitting program.

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

Good Practices not addressed elsewhere in this questionnaire

16. 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?

    The use of templates to improve consistency: When a new rule is promulgated or an existing rule is amended, the initial integration of the rule into a Title V permit is used as a template for subsequent permits that are revised to reflect the rule promulgation or revision.

EPA assistance not addressed elsewhere in this questionnaire

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

The Air District is always open to additional streamlining and reforms to improve the Title V program such that resources are used more efficiently and effectively.

Attachment 1

Title V Renewal Application Reminder Email

Dear Ms. Azevedo:

Your current Title V permit will expire on April 24, 2023, and the Title V renewal permit application must be received by the District no later than October 24, 2022. We are requesting that each Title V facility provide a draft revised copy of their permit in electronic format as part of their Title V renewal application. This is in accordance with District Regulation 2, Rule 6, Section 405 that specifies which information must be submitted by the applicant with a Title V permit renewal application. This electronic copy of the draft revised permit will take the place of the Title V permit application form entitled "Applicable Requirements & Compliance Summary Form" that was previously submitted in paper form.

Attached to this email is an electronic copy (MS Word) of your current Title V permit with pending proposed minor revisions shown in strikeout/underline format. The statement of basis for the proposed minor revision is also attached. The requisite Title V application forms are attached. If necessary, contact your assigned permit engineer for copies of the engineering evaluation reports for any new source review permit applications that have been processed since the issuance of your current Title V permit.

We request that you revise the attached copy of the permit as necessary to reflect the addition/deletion of sources, changes in permit conditions, new/revised applicable requirements, and new/revised monitoring requirements, etc. Please submit an electronic copy of the revised permit with your renewal application and provide an explanation for any changes made to the permit.

Please follow these guidelines throughout the renewal permit application process:

- Use the "track changes" feature of Microsoft word when revising the permit so that it is clear what you are proposing to change in the permit

- Do not make any revisions to sections I "Standard Conditions", III "Generally Applicable Requirements", IX "Permit Shield", and X "Glossary".

- You must still complete and submit the following Title V application forms as part of your renewal application. Copies of the forms are attached to this e-mail in MS Word format.

  Stationary Source Summary (pages 1 and 2)
  Major Facility Review Certification Statement
  Total Stationary Source Emissions
  Major Facility Review Detailed Emissions Report (only for significant sources (per 2-6-239) that are not currently listed in permit)
  Major Facility Review Schedule of Compliance (only if applicable)
  Major Facility Review Permit Shield (only if applicable)

Please submit your application by email to permits@baaqmd.gov on or before October 24, 2022.

If you have any questions regarding this e-mail, please contact me at djang@baaqmd.gov. If you have any questions regarding your Title V permit, please contact Loi Chau, your assigned permit engineer at lchau@baaqmd.gov.

Thank you for your assistance.

Dennis Jang
Supervising Air Quality Engineer

Bay Area Air Quality Management District
Engineering Division | Permitting, Organic Recovery, and Title V Section
375 Beale Street, Suite 600 | San Francisco, CA 94105
(415) 749-4707 | djang@baaqmd.gov

Attachment 2

Example Title V Checklist

Plant Name: _____ Title V Application Checklist Application #_____

Date:_____ Initial, Renewal, Significant Revision Facility #_____

Application Type:

Yellow: Review Required White: Review Optional Check Box Upon Completion Enter N/A if section does not apply		Processor		Reviewer					
		TV Tech.	Permit Eng.	Supv. Eng.	TV Senior Eng.	TV Supv. Eng.	Eng. Mgr.	Title V Eng. Mgr.	Director
	Employee Initials								
Permit	Application Fees								
	Cover Page								
	Responsible Official								
	Facility Contact								
Part I	Standard Conditions								
Part II	Equipment Tables								
	Abatement Device Table								
	Significant Source Table								
	Exempt Source Table								
Part III	Generally Applicable Requirements								
	Adoption Dates								
	New/Amended Regulations								
	New SIP regulations								
Part IV	Applicable Requirements								
	New/Deleted requirements								
	Amended requirements								
	New/Deleted Source Tables								
Part V	Schedule of Compliance								
Part VI	Permit Conditions								
Part VII	Compliance Monitoring Requirements								
	New/Deleted requirements								
	Amended requirements								
	New/Deleted Source Tables								
Part VIII	Test Methods								
Pat IX	Acid Rain Permit								
Part IX	Permit Shield								
Part X	Revision History								
Part XI	Glossary								
SOB									
Part A.	Background								
	Included NSR Applications								
Part B.	Facility Description								
	Source/AD additions/deletions								
	Changes in Total Facility Emissions								
Part C	Permit Content								
Part I.	Standard Conditions								
Part II.	Equipment Tables								
	Source/AD additions/deletions								
Part III.	Generally applicable requirements								
	adoption dates/new regulations								
Part IV.	Source specific app. requirements								

Plant Name: _____ Title V Application Checklist Application #_____

Date:_____ Initial, Renewal, Significant Revision Facility #_____

Application Type:

Yellow: Review Required White: Review Optional Check Box Upon Completion Enter N/A if section does not apply	Processor		Reviewer					
	TV Tech.	Permit Eng.	Supv. Eng.	TV Senior Eng.	TV Supv. Eng.	Eng. Mgr.	Title V Eng. Mgr.	Director
Employee Initials								
New source tables								
Amended regulations								
New app. requirements								
Complex Applicability Determinations								
112(J) HAP PTE								
CAM								
NESHAP								
NSPS								
Acid Rain								
Other:_____								
Part V. Schedule of Compliance								
Part VI. Permit Conditions								
Part VII. App. Limits & Compliance Monitoring								
Monitoring Discussion by pollutant								
Part VIII. Test Methods								
Part IX. Acid Rain Permit								
Part IX. Permit Shield								
Part X. Revision History								
Part XI. Glossary								
Part D Alternate Operating Scenarios								
Part E Compliance Status								
Certification Statement Form								
Part F Differences bet. App. & proposed permit								
App. A Glossary								
App. B NSR Evaluation Report(s)								
Administrative Tasks								
Public Notice Routing Memo								
Public Notice Transmittal Letters								
Public Notice								
EPA Review Routing Memo								
EPA Review Transmittal Letters								
Accept Changes to Permit/Save								
Permit Issuance Dates								
Acid Rain Permit Issuance Dates								
Update Paragraph I.B.I dates								
Response to Public/EPA Comments								
Final Issuance routing memo								
Final Issuance transmittal letters								
Update Permit Conditions in DB								
Update Final Disposition								
Public Comment Fee Invoice								
Copies of SOB/Final Permit for App. Folder								

Plant Name: _____ Title V Application Checklist Application #_____

Date:_____ Initial, Renewal, Significant Revision Facility #_____

Application Type:

Yellow: Review Required White: Review Optional Check Box Upon Completion Enter N/A if section does not apply	Processor		Reviewer					
	TV Tech.	Permit Eng.	Supv. Eng.	TV Senior Eng.	TV Supv. Eng.	Eng. Mgr.	Title V Eng. Mgr.	Director
Employee Initials								
Clean App. Folder Prior to Filing								

Appendix C. BAAQMD Title V Permitting Policies

Policy: Simultaneous Drafting of NSR Permit Evaluation and Title V Statement of Basis

Policy

For each NSR application that will result in a Title V minor revision, the permit engineer will include the Title V minor revision statement of basis (SOB) in the body of the NSR permit evaluation or attached to the NSR evaluation report. Upon issuance of the NSR permit, the corresponding Title V revision application will be placed on "hold/fold" status in the data bank.

Who is affected

Permit processing engineers

Rationale

By drafting the Title V revision SOB with the corresponding NSR permit evaluation, the proposed revisions to the Title V permit will be clearly identified. This will expedite the subsequent issuance of the Title V permit revisions.

If a Title V facility has numerous outstanding Title V revision applications, these applications can be processed under the April 23, 2015 Procedure "Grouping Title V Revision Applications for Combined Issuance on an Annual Basis." For single revision applications, the proposed revised Title V permit can be submitted to EPA for its 45-day review period immediately following the issuance of the NSR permit and the completion of any corresponding changes to the Title V permit.

Note: This policy and procedure will not delay the evaluation and issuance of any NSR permit. The proposal and issuance of the revised Title V permit will occur after the NSR permit has been issued.

The NSR application will be issued in accordance with current procedures and statutory timelines.

Background

Under the current procedure, the permit engineer drafts the Title V minor revision SOB after the corresponding NSR application has been issued. Due to competing workload obligations, the permit engineer may not be able to work on the Title V minor revision immediately following the issuance of the NSR permit. This can result in significant delays in the issuance of the Title V permit minor revision. This policy will work well with the April 23, 2015 Procedure, "Grouping Title V Revision Applications for Combined Issuance on an Annual Basis" since the TV SOB will already be finished and clearly identify the changes that will be made to the TV permit.

Contact

Dennis Jang, ext. 4707

Related Procedure	Grouping Title V Revision Applications for Combined Issuance on an Annual Basis (issued April 23, 2015)

Approval

Jim Karas, P.E.
Director of Engineering

10/1/15
Date

Procedure: Grouping Title V Revision Applications for Combined Issuance on an Annual Basis

Staff Procedures

On September 1st of each year (or other date specified by management), the permit engineer will combine all outstanding Title V revision applications for their assigned facility that are ready for issuance and issue them under a single Title V permit revision within six months.

Phase 1: Review Applications and Consolidate (Complete by September 15th)

Step	Action
1	Collect and review outstanding Title V revision applications
2	Identify applications that are ready for issuance
3	Identify most recently submitted application and designate it as the annual combined Title V revision application
4	Inform Title V technician of applications included in combined issuance for databank status update, so he or she can update the databank status to "fold/hold"

Phase 2: Revise Title V Permit and Draft SOB (Complete and circulate for review by November1st)

Step	Action
1	Review corresponding NSR applications and determine necessary changes to Title V permit
2	Revise Title V permit using strikeout/underline
3	Describe changes to permit in SOB

Phase 3a: If Significant Revision: Propose Permit for EPA Review and Public Comment (Publish public notice and send to EPA by December 1st)

Step	Action
1	Prepare proposed permit issuance letters and public notice
2	Circulate for signature
3	Post proposed permit, SOB, letters, and public notice on District website
4	Review and address any comments received

Phase 3b: If Minor Revision: Propose Permit for EPA Review (Send to EPA by December 1st)

Step	Action
1	Prepare proposed issuance letters
2	Circulate for signature
3	Review and address any comments received
4	If necessary, revise permit in response to comments

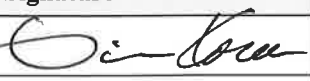
Phase 4: On or before March 1st of each year, issue Final Revised Permit

Step	Action
1	Prepare final issuance letters
2	Prepare final version of permit
3	Circulate for signature
4	Inform Title V technician to update the databank final disposition of all included revisions applications to "Title V" with same issuance date.
5	Notify EPA, ARB, and the facility of permit issuance.
6	Post final letters and permit on website.

Rationale: By specifying an annual date for this "combined issuance" the revision applications that are ready for issuance will not accumulate over several years. This policy applies to any Title V facility that submits numerous Title V applications on a continual basis. For example, petroleum refineries are the most active Title V facilities. It is not unusual for a refinery to submit 30 or more NSR applications in a year. Because the refineries do not coordinate the submittal of their NSR applications, the assigned permit engineer often accumulates the associated Title V revision applications and issues these applications together at some future date. Currently, the individual engineer decides when he or she will issue the combined permit revision. Depending upon individual workload demands, a given engineer could accumulate several years of open Title V revision applications that are ready for issuance.

Contact Greg Solomon, ext. 4715
Dennis Jang, ext. 4707

Approval

Name & Title	Signature	Date
Jim Karas, Director of Engineering		4/23/15

Policy: Designated Work Day for Title V and Synthetic Minor Permit Applications ("Title V Tuesdays")

Objective

To reduce the backlog of Title V and synthetic minor applications, Engineering Division staff will work on Title V/synthetic minor applications for at least 4 hours on Tuesday of each week.

Policy

On Tuesday of each week, Engineering division staff will work on open Title V/synthetic minor applications for at least 4 hours even if staff has outstanding or overdue New Source Review (NSR) applications or other project demands.

This policy does not in any way restrict Title V/synthetic minor permit application processing to Tuesdays. Staff is encouraged to work on Title V/synthetic minor applications on any day of the week.

Title V staff will be available to answer questions and provide assistance as needed. Title V staff will monitor the progress in the monthly Title V meetings.

Scope

This policy applies to all staff with assigned Title V/synthetic minor applications.

This policy applies to all types of Title V applications including administrative amendments, minor revisions, significant revisions, initials, renewals, and reopenings. This policy also applies to synthetic minor initial, cancellation, and revision applications.

This policy applies to all open Title V/synthetic minor applications, whether the applications are overdue or not.

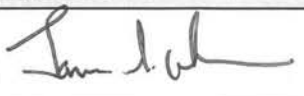
Applicability

Effective Date:	Upon Director approval
Linked Policies:	None
Linked Procedures:	None
Applicable Roles/Entities:	Engineering Permitting staff

Contact

Dennis Jang, ext. 4707

Approval

Name & Title	Signature	Date
Jaime A. Williams, Director of Engineering		10/17/16

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

Table of SOB guidance

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

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

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

[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 _____/S/_____
Date 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 2 NOVs for the Heat Recovery Steam Generator (S-1031), and 3 episodes and 2 NOVs for the South Flare (S-18).

A close examination of the BAAQMD Episodes chart relied upon by Petitioner, however, reveals that the failures identified for these episodes and NOVs are actually quite distinct from one another, often covering different components and regulatory requirements. This fact makes sense as emission and process units at refineries tend to be very complex with multiple components and multiple applicable requirements. When determining whether a compliance schedule is necessary for ongoing violations at a particular emission unit based on multiple NOVs issued for that unit, it would be reasonable for a permitting authority to consider whether the violations pertain to the same component of the emission unit, the cause of the violations is the same, and the cause has not been remedied through the District's enforcement actions. Again, Petitioner has failed to demonstrate that the District's consideration of the various repeat episodes and alleged violations may have resulted in a deficiency in the Permit. EPA therefore denies the Petition as to this issue.

d. Complaints

Petitioner contends that the "numerous complaints" received by the District between 2001 and 2004 also lay a basis for the need for a compliance schedule. These complaints were generally for odor, smoke or other concerns. As with the episodes discussed above, the mere existence of a complaint does not evidence a regulatory violation. Moreover, where the District has verified certain complaints, it has issued an NOV to address public nuisance issues. As such, even though complaints may indicate problems that need additional investigation, they do not necessarily lay the basis for a compliance schedule. Because Petitioner has not demonstrated that the complaints received by the District may have resulted in a deficiency in the Permit, EPA denies the Petition as to this issue.

e. Allegation that Problems are not Resolved

Petitioner proposes three "potential solutions to ensure compliance:" (1) the District should address recurring compliance at specific emission units, namely S-5, S-220 and S-1030, (2) the District should impose additional maintenance or installation of monitoring equipment, or new monitoring methods to address the 30 episodes involving inoperative monitors; and (3) the District should impose additional operational and maintenance requirements to address recurring problems since the source is not operating in compliance with the NSPS requirement to maintain and operate the facility in a manner consistent with good air pollution control practice for minimizing emissions. Petition at 18-19.

In regard to Petitioner's first claim for relief, EPA has already explained that Petitioner has not demonstrated that the District's consideration of the various 'recurring' violations for particular emission units may have resulted in a deficient permit or justifies the imposition of a compliance schedule. In regard to the second claim for relief, the 30 episodes cited by Petitioner are for different monitors, and spread over a multi-year period. As long as the District seeks prompt corrective action upon becoming aware of inoperative monitors, EPA does not see this as a basis for additional maintenance and monitoring requirements for the monitors. Moreover, EPA could only require additional monitoring requirements to the extent that the underlying SIP or some other applicable requirement does not already require monitoring. *See* 40 C.F.R. § 70.6(a)(3)(i)(B). Lastly, in response to Petitioner's third claim for relief seeking imposition of additional operation and maintenance requirements due to an alleged violation of the "good air pollution control practice" requirements of the NSPS, EPA believes that such an allegation of noncompliance is too speculative to warrant a compliance schedule without further investigation. As such, EPA finds that Petitioner has not demonstrated that the District's failure to include any of the permit requirements Petitioner requests here resulted in, or may have resulted in, a deficient permit, and EPA denies the Petition on this ground.

2. Non-Compliance Issues Raised by Public Comments

Petitioner claims that since the District failed to resolve New Source Review ("NSR")[12] compliance issues, EPA should object to the issuance of the Permit and require either a compliance schedule or an explanation that one is not necessary. Petition at 21. Petitioner claims to have identified four potential NSR violations at the refinery, as follows: (i) an apparent substantial rebuild of the fluid catalytic cracking unit ("FCCU") regenerator (S-5) without NSR review,[13] based on information that large, heavy components of the FCCU were recently

[12] "NSR" is used in this section to include both the nonattainment area New Source Review permit program and the attainment area Prevention of Significant Deterioration ("PSD") permit program.

[13] Petitioner also alleges that S-5 went through a rebuild without imposition of emission limitations and other requirements of 40 C.F.R. § 63 Subpart UUU. EPA notes that the requirements of Subpart UUU are included in the Permit with a future effective date of April 11, 2005. Permit at 80.

replaced; (ii) apparent emissions increases at two boiler units (S-3 and S-4) beyond the NSR significance level for modified sources of NOx, based on the District's emissions inventory indicating dramatic increases in NOx emissions between 1993 and 2001; and (iii) an apparent significant increase in SO_2 emissions at a coker burner (S-6), based on the District's emissions inventory indicating a dramatic increase in SO_2 emissions in 2001 over the highest emission rate during 1993 to 2000.[14] Petition at 20.

All sources subject to title V must have a permit to operate that assures compliance by the source with all applicable requirements. *See* 40 C.F.R. § 70.1(b); CAA §§ 502(a), 504(a). Such applicable requirements include the requirement to obtain NSR permits that comply with applicable NSR requirements under the Act, EPA regulations, and state implementation plans. *See generally* CAA §§ 110(a)(2)(C), 160-69, 172(c)(5), and 173; 40 C.F.R. §§ 51.160-66 and 52.21. NSR requirements include the application of the best available control technology ("BACT") to a new or modified source that results in emissions of a regulated pollutant above certain legally-specified amounts.[15]

Based on the information provided by Petitioner, Petitioner has failed to demonstrate that NSR permitting and BACT requirements have been triggered at the FCCU catalytic regenerator S-5, boilers S-3 or S-4, or coke burner S-6. With regard to the FCCU catalytic regenerator, Petitioner's only evidence in support of its claim is (i) an April 8, 1999, Energy Information Administration press release that states that the refinery announced the shutdown of its FCCU on March 19, 1999, and announced the restarting of the FCCU on April 1, 1999;[16] and (ii) information posted at the Web site of Surface Consultants, Inc., stating that "several large, heavy components on [the FCCU] needed replacement." *See* Petition, Exhibit A. Petitioner offers no evidence regarding the nature of these activities, whether the activities constitute a new or modified source under the NSR rules, or whether refinery emissions were in any way affected

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[14] Petitioner also takes issue with the District's position that "the [NSR] preconstruction review rules themselves are not applicable requirements, for purposes of Title V." (Petition, at 21; December 2003 Consolidated Response to Comments ("CRTC") at 6-7). Applicable requirements are defined in the District's Regulation 2-6-202 as "[a]ir quality requirements with which a facility must comply pursuant to the District's regulations, codes of California statutory law, and the federal Clean Air Act, including all applicable requirements as defined in 40 C.F.R. § 70.2." Applicable requirements are defined in 40 C.F.R. § 70.2 to include "any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act...." Since the District's NSR rules are part of its implementation plan, the NSR rules themselves are applicable requirements for purposes of title V. Since this point has little relevance to the matter at hand (i.e., whether in this case the NSR rules apply to a particular new or modified source at the refinery), EPA views the District's position as *obiter dictum*.

[15] The Act distinguishes between the requirement to apply BACT, which is part of the PSD permit program for attainment areas, and the requirement to apply the lowest achievable emission rate ("LAER"), which is part of the NSR permit program for nonattainment areas. In this case, however, the District's NSR rules use the term "BACT" to signify "LAER."

[16] This press release is available on the Internet at http://www.eia.doe.gov/neic/press/press123.html (last viewed on February 1, 2005).

by these activities

With regard to the two boilers and the coke burner, Petitioner's only evidence in support of its claims are apparent "dramatic" increases in each of these unit's emissions inventory. However, as the District correctly notes:

> "...the principal purpose of the inventory is planning; the precision needed for this purpose is fairly coarse. The inventory emissions are based, in almost all cases, on *assumed* emission factors, and *reported* throughputs. An increase in emissions from one year to the next as reflected in the inventory may be an indication that reported throughput has increased, however it does not automatically follow that the source has been modified. Unless the throughput exceeds permit limits, the increase usually represents use of previously unused, but authorized, capacity. An increase in reported throughput amount could be taken as an indication that further investigation is appropriate to determine whether a modification has occurred. However, the District would not conclude that a modification has occurred simply because reported throughput has increased."

December 1, 2003 Consolidated Response to Comments ("2003 CRTC"), at 22. Moreover, Petitioner does not claim to have sufficient evidence to establish that these units are subject to NSR permitting and the application of BACT. The essence of Petitioner's objection is the need for the District to "determine whether the sources underwent a physical change or change in the method of operation that increased emissions, which would trigger NSR." Petition at 20. Not only is Petitioner unable to establish that these units triggered NSR requirements, Petitioner is not even alleging that NSR requirements have in fact been triggered. Petitioner is merely requesting that the District make an NSR applicability determination based on Petitioner's "well-documented *concerns* regarding *potential* non-compliance." Petition at 20 (*emphasis added*).

During the title V permitting process, EPA has also been pursuing similar types of claims in another forum. As part of its National Petroleum Refinery Initiative, EPA identified four of the Act's programs where non-compliance appeared widespread among petroleum refiners, including apparent major modifications to FCCUs and refinery heaters and boilers that resulted in significant increases in NOx and SO_2 emissions without complying with NSR requirements. However, based on the information provided by Petitioner, EPA is not prepared to conclude at this time that these units at the Valero refinery are out of compliance with NSR requirements. If EPA later determines that these units are in violation of NSR requirements, EPA may object to or reopen the title V permit to incorporate the applicable NSR requirements.[17]

Since Petitioner has failed to show that NSR requirements apply to these units, EPA finds

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[17] EPA notes that with respect to the specific claims of NSR violations raised by Petitioner in its comments, the District "intends to follow up with further investigation." December 1, 2003 CRTC, at 22. EPA encourages the District to do so, especially where, as in this case, the apparent changes in the emissions inventories are substantial.

that Petitioner has not met its burden of demonstrating a deficiency in the Permit. Therefore, the Petition is denied on this issue.

3. Intermittent and Continuous Compliance

Petitioner contends that EPA must object to the Permit because the District has interpreted the Act to require only intermittent rather than continuous compliance. Petition at 21-22. Petitioner contends that the District has a "fundamentally flawed philosophy." Petitioner points to a statement made by the District in its Response to Public Comments, dated December 1, 2003, that "[c]ompliance by the refineries with all District and federal air regulations will not be continuous." Petitioner contends that the District "expects only intermittent compliance" and that the District's belief "that it need only assure 'reasonable intermittent' compliance" means that it failed to see the need for a compliance plan in the Permit.

EPA disagrees with Petitioner's suggestion that the District's view of intermittent compliance has impaired its ability to properly implement the title V program. As stated above, EPA has not concluded that a compliance plan is necessary to address the instances of non-compliance at this Facility. Moreover, the Agency disagrees with Petitioner's interpretations of the District's comments on the issue. For instance, EPA finds nothing in the record stating that the District's view of the Permit, as a legal matter, is that it need assure only intermittent compliance. Rather, a fairer reading of the District's view is that, realistically, intermittent non-compliance can be expected. As the District stated:

> The District cannot rule out that instances of non-compliance will occur. Indeed at a refinery, at least occasional events of non-compliance can be predicted with a high degree of certainty. . . . Compliance by the refineries with all District and federal air regulations will not be continuous. However, the District believes the compliance record at this [Shell] and other refineries is well within a range to predict reasonable intermittent compliance. December 1, 2003 RTC at 15.

The District's view appears to be based on experience and the practical reality that complex sources with thousands of emission points which are subject to hundreds of local and federal requirements will find themselves out of compliance, not necessarily because their permits are inadequate but because of the limits of technology and other factors. Even a source with a perfectly-drafted permit – one that requires state of the art monitoring, scrupulous recordkeeping, and regular reporting to regulatory agencies – may find itself out of compliance, not because the permit is deficient, but because of the limitations of technology and other factors.

EPA also believes that, far from sanctioning intermittent compliance, as Petitioner suggests, *see* Petition at 22, n. 36, the District appears committed to address it through enforcement of the Permit, when appropriate: "when non-compliance occurs, the Title V permit will enhance the ability to detect and enforce against those occurrences." *Id.* Although the District may realistically expect instances of non-compliance, it does not necessarily excuse

them. Non-compliance may still constitute a violation and may be subject to enforcement action

For the reasons stated above, EPA denies the Petition on this ground

4. Compliance Certifications

Initial compliance certifications must be made by all sources that apply for a title V permit at the time of the permit application. *See* 40 C.F.R. § 70.5(c)(9). The Part 70 regulations do not require applicants to update their compliance certification pending issuance of the permit. Petitioner correctly points out that the District's Regulation 2-6-426 requires annual compliance certifications on "every anniversary of the application date" until the permit is issued. Petitioner claims that, other than a truncated update in 2003, the plant has failed to provide annual certifications between the initial permit application submittal in 1996 and issuance of the permit in December 2004. Petitioner believes that "defects in the compliance certification procedure have resulted in deficiencies in the Permit." Petition at 24.

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, including compliance certifications, EPA considers whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. *See* CAA Section 505(b)(2) (objection required "if the petitioner demonstrates ... that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]"); 40 C.F.R. § 70.8(c)(1); *See also In the Matter of New York Organic Fertilizer Company*, Petition No. II-2002-12 (May 24, 2004), at 9. Petitioner assumes, in making its argument, that the District needs these compliance certifications to adequately review compliance for the facility. This is not necessarily true. Sources often certify compliance based upon information that has already been presented to a permitting authority or based upon NOVs or other compliance documents received from a permitting authority. The requirement for the plant to submit episode and other reports means that the District should be privy to all of the information available to the source pertaining to compliance, regardless of whether compliance certifications have been submitted annually. Finally, the District has a dedicated employee assigned as an inspector to the plant who visits the plant weekly and sometimes daily. In this particular instance, the compliance certification would likely not add much to the District's knowledge about the compliance status of the plant. EPA believes that in this case, Petitioner has failed to demonstrate that the lack of a proper initial compliance certification, or the alleged failure to properly update that initial compliance certification, resulted in, or may have resulted in, a deficiency in the permit.

D. Statement of Basis

Petitioner alleges that the Statements of Basis for the Permit issued in December 2003 and for the revised Permit, as proposed in August 2004, are inadequate. Specifically, Petitioner alleges the following deficiencies:

Neither Statement of Basis contains detailed facility descriptions, including comprehensive process flow information;

- Neither Statement of Basis contains sufficient information to determine applicability of "certain requirements to specific sources." Petitioner specifically identifies exemptions from permitting requirements that BAAQMD allowed for tanks. Petitioner also references Attachments 2 and 3 to EPA's October 8, 2004 letter as support for its allegation that the Statements of Basis were deficient because they did not address applicability of 40 C.F.R. Part 63, Subpart CC to flares and BAAQMD Regulation 8-2 to hydrogen plant vents.

- Neither Statement of Basis addresses BAAQMD's compliance determinations

- The 2003 Statement of Basis was not made available on the District's Web site during the April 2004 public comment period and does not include information about permit revisions in March and August 2004

  The 2004 Statement of Basis does not discuss changes BAAQMD made to the Permit between the public comment period in August 2003 and the final version issued in December 2003, despite the District's request for public comment on such changes.

EPA's Part 70 regulations require permitting authorities, in connection with initiating a public comment period prior to issuance of a title V permit, to "provide a statement that sets forth the legal and factual basis for the draft permit conditions." 40 C.F.R. § 70.7(a)(5). EPA's regulations do not require that a statement of basis contain any specific elements; rather, permitting authorities have discretion regarding the contents of a statement of basis. EPA has recommended that statements of basis contain the following elements: (1) a description of the facility; (2) a discussion of any operational flexibility that will be utilized at the facility; (3) the basis for applying the permit shield; (4) any federal regulatory applicability determinations; and (5) the rationale for the monitoring methods selected. EPA Region V has also recommended the inclusion of the following: (1) monitoring and operational restrictions requirements; (2) applicability and exemptions; (3) explanation of any conditions from previously issued permits that are not being transferred to the title V permit; (4) streamlining requirements; and (5) certain other factual information as necessary. *See, Los Medanos*, at 10, n.16.

There is no legal requirement that a permitting authority include information such as a specific facility description and process flow diagrams in the Statement of Basis, and Petitioner has not shown how the lack of this information resulted in, or may have resulted in, a deficiency in the Permit. Thus, while a facility description and process flow diagrams might provide useful information, their absence from the Statement of Basis does not constitute grounds for objecting to the Permit.

EPA agrees, in part, that Petitioner has demonstrated the Permit is deficient because the

Statement of Basis does not explain exemptions for certain tanks. This issue is addressed more specifically in Section III.H.3.

EPA agrees with Petitioner's allegation that the Statement of Basis should have included a discussion regarding applicability of 40 C.F.R. Part 63, Subpart CC to flares and BAAQMD Regulation 8-2 to hydrogen plant vents. Applicability determinations are precisely the type of information that should be included in a Statement of Basis. This issue is addressed more specifically in Section III.H.1.

EPA addressed Petitioner's allegations relating to the sufficiency of the discussion in the Statement of Basis on the necessity of a compliance schedule in Section III.C.

EPA does not agree with Petitioner's allegations that the 2003 Statement of Basis was deficient because it was not available on the District's Web site during the 2004 public comment period or because it did not provide information about the 2004 reopening. First, EPA notes that the 2003 Statement of Basis has been available to the public on its own Web site since the initial permit was issued in December, 2003.[18] In addition, Petitioner has not established a legal basis to support its claim that this information is a required element for a Statement of Basis. Petitioner also concedes that the District provided a different Statement of Basis in connection with the 2004 reopening. Petitioner does not claim that the Permit is deficient as a result of any of these alleged issues regarding the Statement of Basis, therefore, EPA denies the Petition on this ground..

EPA does not agree with Petitioner's allegations that the 2004 Statement of Basis was deficient because it did not discuss any changes made between the draft permit available in August 2003 and the final Permit issued in December 2003. Petitioner has not established a legal basis to support its claim that this information is a required element for a Statement of Basis. Petitioner has not demonstrated that the Permit is deficient because the District did not provide this discussion in the 2004 Statement of Basis. Moreover, Petitioner could have obtained much of this information by reviewing the District's response to comments received during the 2003 public comment period, which was dated December 1, 2003. Therefore, EPA denies the Petition on this ground.

E Permit Shields

The District rules allow two types of permit shields. The permit shield types are defined as follows: (1) A provision in a title V permit explaining that specific federally enforceable regulations and standards do not apply to a source or group of sources, or (2) A provision in a title V permit explaining that specific federally enforceable applicable requirements for monitoring, recordkeeping and/or reporting are subsumed because other applicable requirements

[18]Title V permits and related documents are available through Region IX's Electronic Permit Submittal System at http://www.epa.gov/region09/air/permit/index.html.

for monitoring, recordkeeping, and reporting in the permit will assure compliance with all emission limits. The District uses the second type of permit shield for all streamlining of monitoring, recordkeeping, and reporting requirements in title V permits. The District's Statement of Basis explains: "Compliance with the applicable requirement contained in the permit automatically results in compliance with any subsumed (= less stringent) requirement." See December 2003 Statement of Basis at 27.

40 C.F.R. §§ 60.7(c) and (d)

Petitioner alleges that the permit shield in Table IX B of the Permit (p669-670) improperly subsumes 40 C.F.R. §§ 60.7(c) and (d) under SIP-approved BAAQMD Regulation 1-522.8, and that the Statement of Basis does not sufficiently explain the basis for the shield. Petition at 28.

BAAQMD Regulation 1-522.8 requires that

> Monitoring data shall be submitted on a monthly basis in a format specified by the APCO. Reports shall be submitted within 30 days of the close of the month reported on.

Sections 60.7(c) and (d) require very specific reporting requirements that are not required by BAAQMD Regulation 1-522.8. For instance, § 60.7(c)(1) requires that excess emissions reports include the magnitude of excess emissions computed in accordance with § 60.13(h) and any conversion factors used. Section 60.7(d)(1) requires, that the report form contain, among other things, the duration of excess emissions due to startup/shutdown, control equipment problems, process problems, other known causes, and unknown causes and total duration of excess emissions.

The Statement of Basis for Valero contains the following justification for the shield

> 40 C.F.R. Part, 60 Subpart A CMS reporting requirements are satisfied by BAAQMD 1-522.8 CEMS reporting requirements. *See* December 2003 Statement of Basis at 31.

EPA agrees with Petitioner that the requirements of 40 C.F.R. §§ 60.7(c) and (d) are not satisfied by BAAQMD Regulation 1-522.8, and that the Statement of Basis does not provide adequate justification for subsuming §§ 60.7(c) and (d). An adequate justification should address *how* the requirements of a subsumed regulation are satisfied by another regulation, not simply that the requirements *are* satisfied by another regulation. .

For the reasons set forth above, EPA is granting the Petition on these grounds. The District must reopen the Permit to include the reporting requirements of §§ 60.7(c) and (d) or adequately explain how they are appropriately subsumed.

2. BAAQMD Regulation 1-7

Petitioner also alleges that the District incorrectly attempted to subsume the State-only requirements of BAAQMD Regulation 11-7 for valves under the requirements of SIP approved BAAQMD Regulation 8-18-404, and states that only a federal requirement may be subsumed in the permit pursuant to BAAQMD Regulation 2-6-233.2. Petition at 29.

Including a permit shield for a subsumed non-federally enforceable regulation has no regulatory significance from a federal perspective because it is not related to whether the permit assures compliance with all Clean Air Act requirements. See 40 C.F.R. 70.2 (defining "applicable requirement"); 70.1(b) (requiring that title V sources have operating permits that assure compliance with all applicable requirements). State only requirements are not subject to the requirements of title V and, therefore, are not evaluated by EPA unless their terms may either impair the effectiveness of the title V permit or hinder a permitting authority's ability to implement or enforce the title V permit. *In the Matter of Eastman Kodak Company*, Petition No.: II-2003-02, at 37 (Feb. 18, 2005). Therefore, EPA is denying the Petition on this issue.

3. 40 C.F.R. § 60.482-7(g)

Petitioner alleges that a permit shield should not be allowed for federal regulation NSPS Subpart VV, § 60.482-7(g) based upon its being subsumed by SIP-approved BAAQMD Regulation 8-18-404 because the NSPS defines monitoring protocols for valves that are demonstrated to be unsafe to monitor, whereas Regulation 8-18-404 refers to an alternative inspection scheme for leak-free valves. Petitioner states "Because the BAAQMD regulation does not address the same issue as 40 C.F.R. § 60.482-7(g), it cannot subsume the federal requirement." Petition at 29.

EPA disagrees with Petitioner that the two regulations address different issues. Both regulations address alternative inspection time lines for valves. Regulation 8-18-404 specifically states:

> Alternative Inspection Schedule: The inspection frequency for valves may change from quarterly to annually provided all of the conditions in Subsection 404.1 and 404.2 are satisfied.
>
> > 404.1 The valve has been operated leak free for five consecutive quarters;
> > 404.2 Records are submitted and approval from the APCO is obtained.
> > 404.3 The valve remains leak free. If a leak is discovered, the inspection frequency will revert back to quarterly.

NSPS Subpart VV requires valves to be monitored monthly except, pursuant to § 60.482-7(g), any valve that is designated as unsafe to monitor must only be monitored as frequently as practicable during safe-to-monitor times. In explaining the basis for the shield, the Permit states:

[60.482-7(g)] Allows relief from monthly monitoring if designated as unsafe-to-monitor. BAAQMD Regulation 8-18-404 does not allow this relief. Permit at 644.

BAAQMD is correct that the Regulation 8-18-404 is more stringent than 40 C.F.R § 60.482-7(g). Therefore, EPA is denying the Petition on this issue.

F. Throughput Limits for Grandfathered Sources

Petitioner alleges that EPA should object to the Permit to the extent that throughput limits for grandfathered sources set thresholds below which sources are not required to submit all information necessary to determine whether "new or modified construction may have occurred." Petitioner also alleges that the thresholds are not "legally correct" and therefore are not reasonably accurate surrogates for a proper NSR baseline determination. Petitioner also argues that EPA should object to the Permit because the existence of the throughput limits, even as reporting thresholds, may create "an improper presumption of the correctness of the threshold" and discourage the District from investigating events that do not trigger the threshold or reduce penalties for NSR violations. Finally, Petitioner also requests that EPA object to the Permit because the District's reliance on non-SIP Regulation 2-1-234.1 "in deriving these throughput limits" is improper.

The District has established throughput limits on sources that have never gone through new source review ("grandfathered sources"). The Clean Air Act does not require permitting authorities to impose such requirements. Therefore, to understand the purpose of these limits, EPA is relying on the District's statements characterizing the reasons for, and legal implications of, these throughput limits. The District's December 2003 CRTC makes the following points regarding throughput limits:

- The throughput limits being established for grandfathered sources will be a useful tool that enhances compliance with NSR. . . .Requiring facilities to report when throughput limits are exceeded should alert the District in a timely way to the possibility of a modification occurring.

  The limits now function merely as reporting thresholds rather than as presumptive NSR triggers.

  They do not create a baseline against which future increases might be measured ("NSR baseline"). Instead, they act as a presumptive indicator that the equipment has undergone an operational change (even in the absence of a physical change), because the equipment has been operated beyond designed or as-built capacity.

  The throughput limits do not establish baselines; furthermore, they do not contravene NSR requirements. The baseline for a modification is determined at the time of

permit review. The proposed limits do not preclude review of a physical modification for NSR implications.

- Throughput limits on grandfathered sources are not federally enforceable.

- The [permits] have been modified to clearly distinguish between limits imposed through NSR and limits imposed on grandfathered sources.

December 1, 2003 RTC at 31-33.

EPA believes the public comments and the District's responses have done much to describe and explain, in the public record, the purpose and legal significance of the District's throughput limits for grandfathered sources. Based on these interactions, EPA has the following responses to Petitioner's allegations.

First, EPA denies the Petition as to the allegation that the thresholds set levels below which the facility need not apply for NSR permits. As the District states, the thresholds do not preclude the imposition of federal NSR requirements. EPA does not see that the throughput limits would shield the source from any requirements to provide a timely and complete application if a construction project will trigger federal NSR requirements.

Second, the Permit itself makes clear that the throughput limits are not to be used for the purpose of establishing an NSR baseline: "Exceedance of this limit does not establish a presumption that a modification has occurred, nor does compliance with the limit establish a presumption that a modification has not occurred." Permit at 4. Therefore, EPA finds no basis to object to the Permit on the ground that the thresholds are not "reasonably accurate surrogates" for an actual NSR baseline, as they clearly and expressly have no legal significance for that purpose.

Third, while EPA shares Petitioner's interest in compliance with NSR requirements, Petitioner's concern that the thresholds might discourage reliance on appropriate NSR baselines to investigate and enforce possible NSR violations is speculative and cannot be the basis of an objection to the Permit.

Fourth, EPA finds that the District's reliance on BAAQMD Regulation 2-1-234.1, which is not SIP-approved, to impose these limits is appropriate. EPA's review of the Permit, however, found a statement suggesting that the District will rely on this non-SIP approved rule to determine whether an NSR modification has occurred. EPA takes this opportunity to remind the District that its NSR permits must meet the requirements of the federally-applicable SIP. *See* CAA 172, 173; 40 C.F.R. § 51. EPA finds no basis, however, to conclude that the Permit is deficient.

G. Monitoring

The lack of monitoring raises an issue as to consistency with the requirement that each permit contain monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit where the applicable requirement does not require periodic monitoring or testing. *See* 40 C.F.R. § 70.6(a)(3)(i)(B). EPA has recognized, however, that there may be limited cases in which the establishment of a regular program of monitoring or recordkeeping would not significantly enhance the ability of the permit to assure compliance with an applicable requirement and where the status quo (i.e., no monitoring or recordkeeping) could meet the requirements of 40 C.F.R. § 70.6(a)(3). *See, Los Medanos*, at 16. EPA's consideration of these issues and determinations as to the adequacy of monitoring follow.

1 40 C.F.R. Part 60, Subpart J (NSPS for Petroleum Refineries)

Petitioner makes the following allegations with regard to the treatment of flares under NSPS Subpart J: (i) BAAQMD has not made a determination as to the applicability of NSPS Subpart J to three of the four flares at Valero; (ii) there is no way to tell whether flares qualify for the exemption in NSPS Subpart J because there are no requirements in the Permit to ensure that the flares are operated only in "emergencies;" (iii) the Permit must contain a federally enforceable reporting requirement to verify that each flaring event would qualify for an exemption from the H2S limit; (iv) the Permit fails to ensure that all other NSPS Subpart J requirements are practically enforceable; and (v) federally enforceable monitoring must be imposed pursuant to 40 C.F.R. §§ 70.6(a)(3)(i)(B) and 70.6(c) and Section 504(c) of the Act to verify compliance with all applicable requirements of Subpart J. Petition at 33.

The New Source Performance Standard (NSPS) for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J, prohibits the combustion of fuel gas containing H_2S in excess of 0.10 gr/dscf at any flare built or modified after June 11, 1973. This prohibition is codified in 40 C.F.R. § 60.104(a)(1). Additionally, 40 C.F.R. §§ 60.105(a)(3-4) requires the use of continuous monitors for flares subject to § 60.104(a)(1). However, the combustion of gases released as a result of emergency malfunctions, process upsets, and relief valve leakage is exempt from the H_2S limit. The draft refinery permits proposed by BAAQMD in February 2004 applied a blanket exemption from the H_2S standard and associated monitoring for about half of the Bay Area refinery flares on the basis that the flares are "not designed" to combust routine releases. The statements of basis for the refinery permits state, however, that at least some of these flares are "physically capable" of combusting routine releases. To help assure that this subset of flares would not trigger the H_2S standard, BAAQMD included a condition in the permits prohibiting the combustion of routine releases at these flares.

Following EPA comments submitted to BAAQMD in April of 2004; BAAQMD revised its approach to the NSPS Subpart J exemption. The permits proposed to EPA in August of 2004 indicate that all flares that are affected units under 60.100 are subject to the H2S standard, except when they are used to combust process upset gases, and gases released to the flares as a result of relief valve leakages or other malfunctions. However, the permits were not revised to include the

continuous monitors required under §§ 60.105(a)(3) and (4) on the basis that the flares will always be used to combust non-routine releases and thus will never actually trigger the H2S standard or the requirement to install monitors.

With respect to Petitioner's first allegation, BAAQMD has clearly considered applicability of NSPS Subpart J to flares, and has indicated that NSPS Subpart J applies to one, S-19. Page 16 of the December 2004 Statement of Basis states:

> The Benicia Refinery has three separate flare header systems: 1) the main flare gas recovery header with flares S-18 and S-19, 2) the acid gas flare header with flare S-16, and 3) the butane flare header with flare S-17. Flares S-16 and S-18 were placed in service during the original refinery startup in 1968. Flare S-17 was placed in service with the butane tank TK-1726 in 1972. Flare S-19 was added to the main gas recovery header in 1974 to ensure adequate relief capacity for the refinery. S-19 is subject to NSPS Subpart J, because it was a fuel gas combustion device installed after June 11, 1973, the effective date of 60.100(b).

The table on page 18 of the Statement of Basis also directly states that flares S-16, S-17 and S-18 are not subject to NSPS Subpart J. While the Permit would be clearer if BAAQMD included a statement that the flares have not been modified so as to trigger the requirements of NSPS Subpart J, such a statement is not required by title V. Therefore, EPA is denying the Petition on this issue.

However, EPA agrees with Petitioner that the Permit is flawed with respect to issues (ii) and (iii) above. First, the continuous monitoring of §§ 60.105(a)(3) and (4) is not included in the Permit because, BAAQMD claims, flare S-19 is never used in a manner that would trigger the H2S standard and the requirement to install a continuous monitor. While the Permit does contain District enforceable only monitoring to show compliance with a federally enforceable condition prohibiting the combustion of routinely-released gases in a flare (20806, #7), there is currently no federally enforceable monitoring requirement in the Permit to demonstrate compliance with this condition or with NSPS Subpart J, both federally enforceable applicable requirements. Because NSPS Subpart J is an applicable requirement, the Permit must contain periodic monitoring pursuant to 40 C.F.R. § 70.6(a)(3)(i)(B) and BAAQMD Reg. 6-503 (BAAQMD Manual of Procedures, Vol. III, Section 4.6) to show compliance with the regulation.

Therefore, EPA is granting the Petition on the basis that the Permit does not assure compliance with NSPS Subpart J, or with federally enforceable permit condition 20806, #7. BAAQMD must reopen the Permit to either include the monitoring under sections 60.105(a)(3) or (4), or, for example, to include adequate federally enforceable monitoring to show compliance with condition 20806, #7.

With respect to issues (iv) and (v), it is unclear what other requirements Petitioner is referring to, or what monitoring Petitioner is requesting. For these reasons, EPA is denying the

Petition on these grounds.

2 Flare Opacity Monitoring

Petitioner notes that flares are subject to SIP-approved BAAQMD Regulation 6-301, which prohibits visible emissions from exceeding defined opacity limits for a period or periods aggregating more than three minutes in any hour. Petitioner alleges that the opacity limit set forth in Regulation 6-301 is not practically enforceable during short-duration flaring events because no monitoring is required for flaring events that last less than fifteen minutes and only limited monitoring is required for events lasting less than thirty minutes. Petitioner alleges that repeated violations of BAAQMD Regulation 6-301 due to short-term flaring could be an ongoing problem that evades detection.

The opacity limit in Regulation 6-301 does not contain periodic monitoring. Because the underlying applicable requirement imposes no monitoring of a periodic nature, the Permit must contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit . . . ." 40 C.F.R. § 70.6(a)(3)(i)(B). Thus, the issue before EPA is whether the monitoring imposed in the Permit will result in reliable and representative data from the relevant time period such that compliance with the Permit can be determined.

In this case, the District has imposed certain monitoring conditions to determine compliance with the opacity standard during flaring events. The Permit defines a "flaring event" as a flow rate of vent gas flared in any consecutive 15 minute period that continuously exceeds 330 standard cubic feet per minute (scfm). Within 15 minutes of detecting a flaring event, the facility must conduct a visible emissions check. The visible emissions check may be done by video monitoring. If the operator can determine there are no visible emissions using video monitoring, no further monitoring is required until another 30 minutes has expired. If the operator cannot determine there are no visible emissions using video monitoring, the facility must conduct either an EPA Reference Method 9 test or survey the flare according to specified criteria. If the operator conducts Method 9 testing, the facility must monitor the flare for at least 3 minutes, or until there are no visible emissions. If the operator conducts the non-Method 9 survey, the facility must cease operation of the flare if visible emissions continue for three consecutive minutes.

Although EPA agrees with Petitioner that the Permit does not require monitoring during short-duration flaring events, EPA does not believe Petitioner has demonstrated that the periodic monitoring is inadequate. For instance, Petitioner has not shown that short-duration flaring events are likely to be in violation of the opacity standard, nor has Petitioner made a showing that short-duration flaring events occur frequently or at all. Thus, Petitioner has not demonstrated that the periodic monitoring in the Permit is insufficient to detect violations of the opacity standard.

Additionally, in June 1999, a workgroup comprised of EPA, CAPCOA and CARB staff completed a set of periodic monitoring recommendations for generally applicable SIP requirements such as Regulation 6-301. The workgroup's relevant recommendation for refinery flares was a visible emissions check "as soon as an intentional or unintentional release of vent gas to a gas flare but no later than one hour from the flaring event." *See* CAPCOA/CARB/EPA Region IX Periodic Monitoring Memo, June 24, 1999, at 2. In comparison, the periodic monitoring contained in the Permit would appear to be both less stringent, by not requiring monitoring for up to thirty minutes of a release of gas to a flare, and more stringent, by requiring monitoring within 30 minutes rather than one hour. Therefore, EPA encourages the District to amend the Permit to require monitoring upon the release to the flare, rather than delaying monitoring as currently set forth in the Permit.

Finally, EPA notes that the Permit does not prevent the use of credible evidence to demonstrate violations of permit terms and conditions. Even if the Permit does not require visible emissions checks for short-duration flaring events, EPA, the District, and the public may use any credible evidence to bring an enforcement case against the source. 62 Fed. Reg. 8314 (Feb. 24, 1997).

For the reasons cited above, EPA is denying the Petition on this issue.

3 Cooling Tower Monitoring

Petitioner claims that the Permit lacks monitoring conditions adequate to assure that the cooling tower complies with SIP-approved District Regulations 8-2 and 6. Petitioner further alleges that the District's decisions to not require monitoring for the cooling towers is flawed due to its use of AP-42 emission factors, which may not be representative of the actual cooling tower emissions.

a. Regulation 8-2

District Regulation 8-2-301 prohibits miscellaneous operations from discharging into the atmosphere any emission that contains 15 lb per day and a concentration of more than 300 ppm total carbon. Although the underlying applicable requirement does not contain periodic monitoring requirements, the District declined to impose monitoring on source S-29 to assure compliance with the emission limit.[19]

The December 1, 2003 Statement of Basis sets forth the grounds for the District's decision that monitoring is not necessary to assure compliance with this applicable requirement. First, the District stated that its monitoring decisions were made by balancing a variety of factors including 1) the likelihood of a violation given the characteristics of normal operation, 2) the degree of variability in the operation and in the control device, if there is one, 3) the potential

[19] *See* Permit, Table VII – C5 Cooling Tower, pp. 541

severity of impact of an undetected violation, 4) the technical feasibility and probative value of indicator monitoring, 5) the economic feasibility of indicator monitoring, and 6) whether there is some other factor, such as a different regulatory restriction applicable to the same operation, that also provides some assurance of compliance with the limit in question. In addition, the District provided calculations that purported to quantify the emissions from the facility's cooling tower. The calculations relied upon water circulation and exhaust airflow rates supplied by the refinery in addition to two AP-42 emission factors. The District found that the calculated emissions were much lower than the regulatory limit and concluded that monitoring was not necessary. Although it is true that the results suggest there may be a large margin of compliance, the nature of the emissions and the unreliability of the data used in the calculations renders them inadequate to support a decision that no monitoring is needed over the entire life of the permit.

An AP-42 emission factor is a value that roughly correlates the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant. The use of these emission factors may be appropriate in some permitting applications, such as establishing operating permit fees. However, EPA has stated that AP-42 factors do not yield accurate emissions estimates for individual sources. *See In the Matter of Cargill, Inc.*, Petition IV-2003-7 (Amended Order) at 7, n.3 (Oct.19, 2004); *In re: Peabody Western Coal Co.*, CAA Appeal No. 04-01, at 22-26 (EAB Feb. 18, 2005). Because emission factors essentially represent an average of a range of facilities and emission rates, they are not necessarily indicative of the emissions from a given source at all times; with a few exceptions, use of these factors to develop source-specific permit limits or to determine compliance with permit requirements is generally not recommended. The District's reliance on the emission factors in making its monitoring decision is therefore problematic.

Atmospheric emissions from the cooling towers include fugitive VOCs and gases that are stripped from the cooling water as the air and water come into contact. In an attempt to develop a conservative estimate of the emissions, the District used the emission factor for "uncontrolled sources." For these sources, AP-42 Table 5.1.2 estimates the release of 6 lb of VOCs per million gallons of circulated water. This emission factor carries a "D" rating, which means that it was developed from a small number of facilities, and there may be reason to suspect that the facilities do not represent a random or representative sample of the industry. In addition, this rating means that there may be evidence of variability within the source population. In this case the variability stems from the fact that 1) contaminants enter the cooling water system from leaks in heat exchangers and condensers, which are not predictable, and 2) the effectiveness of cooling tower controls is itself highly variable, depending on refinery configuration and existing maintenance practices.[20] It is this variability that renders the emission factor incapable of assuring continued compliance with the applicable standard over the lifetime of the permit. For all practical purposes, a single emission factor that was developed to represent long-term average emissions can not forecast the occurrence and size of leaks in a collection of heat exchangers and is therefore not predictive of compliance at any specific time.

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[20] AP 42, Fifth Edition, Volume I, Chapter 5

EPA has previously stated that annual reporting of NOx emissions using an equation that uses current production information, along with emission factors based on prior source tests, was insufficient to assure compliance with an emission unit's annual NOx standard. Even when presented with CEMs data which showed that actual NOx emissions for each of five years were consistently well below the standard, EPA found that a large margin of compliance alone was insufficient to demonstrate that the NOx emissions would not change over the life of the permit. *See In the Matter of Fort James Camas Mill*, Petition No. X-1999-1, at 17-18, (December 22, 2000).

Consistent with its findings in regard to the Fort James Camas Mill permit, EPA finds in this instance that the District failed to demonstrate that a one-time calculation is representative of ongoing compliance with the applicable requirement, especially considering the unpredictable nature of the emissions and the unreliability of the data used in the calculations. Therefore, under the authority of 40 C.F.R. § 70.6(a)(3)(i)(B), EPA is granting Petitioner's request to object to the Permit as the request pertains to cooling tower monitoring for District Regulation 8-2-301.

As an alternative to meeting the emission limitation cited in Section 8-2-301, facilities may operate in accordance with an exemption under Section 8-2-114, which states, "emissions from cooling towers...are exempt from this Rule, provided best modern practices are used." As a result, in lieu of adding periodic monitoring requirements adequate to assure compliance with the emission limit in Section 8-2-301, the District may require the Statement of Basis to include an applicability determination with respect to Section 8-2-114 and revise the Permit to reflect the use of best modern practices.

b. Regulation 6

BAAQMD SIP-approved Regulation 6 contains four particulate matter emissions standards for which Petitioner objects to the absence of monitoring. The District's decision for each standard is discussed separately below.

(1) Regulation 6-310

BAAQMD Regulation 6-310 limits the emissions from the cooling tower to 0.15 grains per dry standard cubic foot. Appendix G of the December 1, 2003 Statement of Basis sets forth the grounds for the District's decision that monitoring is not necessary to assure compliance with this requirement. Specifically, Appendix G provides calculations for the particulate matter emissions from the cooling tower and compares the expected emission rate to the regulatory limit. In calculating the emissions, the District used the PM-10 emission factor of 0.019 lb per 1000 gal circulating water from Table 13.4-1 of AP-42. The calculations show that the emissions are expected to be approximately 180 times lower than the emission limit. As a result, the District concluded that periodic monitoring is not necessary to assure compliance with the standard.

Petitioner alleges that these calculations do not adequately justify the District's decision because the AP-42 emission factor used carries an E rating, which means that it is of poor quality. As a result, Petitioner claims it is unlikely that the calculated emissions based on this factor are representative of the actual cooling tower emissions.

Petitioner is correct that the emission factor used by the District has an E rating. However, EPA disagrees that this rating alone is sufficient to conclude that the emission factor is not representative of the emissions from the cooling towers at the refinery. PM-10 emissions from cooling towers are generated when drift droplets evaporate and leave fine particulate matter formed by crystallization of dissolved solids. Particulate matter emission estimates can be obtained by multiplying the total liquid drift factor by the total dissolved solids (TDS) fraction in the circulating water. The AP-42 emission factor used by the District is based on a drift rate of 0.02% of the circulating water flow and a TDS content of approximately 12,000 ppm. With regard to both parameters, the District indicated in the December 1, 2003 Statement of Basis that the emission factor yielded a higher estimate of the emissions than the actual drift and TDS data that was supplied by the refineries. Therefore, EPA believes that the District's reliance on this emission factor does not demonstrate a deficiency in the Permit.[21]

EPA notes that the emission factor's poor rating is due in part to the variability associated with cooling tower drift and TDS data. As discussed in the Statement of Basis, the degree to which the emissions may vary was taken into account when considering the ability of the emission factor to demonstrate compliance with the emission limit. With respect to the drift, EPA believes that the emission factor is conservatively high compared to the 0.0005% drift rate that cooling towers are capable of achieving. Where TDS are concerned, AP-42 indicates that the dissolved solids content may range from 380 ppm to 91,000 ppm. While the emission factor represents a TDS concentration at the lower end of this spectrum, increases in the TDS content do not significantly increase the grain loading due to the large exhaust air flow rates exiting the cooling towers. Even assuming that the TDS concentration reached 91,000 ppm, the calculated emissions are still approximately 22 times lower than the regulatory limit.[22]

The District has provided sufficient evidence to demonstrate that the emissions will not vary by a degree that would cause an exceedance of the standard. Given the representative air flow and water circulation rates supplied by the refinery, compliance with the applicable requirement is expected under conditions (i.e., maximum TDS content) that represent a reasonable upper bound of the emissions. Therefore, EPA is denying Petitioner's request to object to the Permit as it pertains to periodic monitoring for Regulation 6-310.

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[21] Although EPA stated above in the discussion for Regulation 8-2 that AP-42 emission factors are generally not recommended for use in determining compliance with emission limits, there are exceptions. Data supplied by the refineries indicates that the AP-42 emission factor for PM-10 conservatively estimates the actual cooling tower emissions; as discussed further below, compliance with the limit is expected under conditions that represent a reasonable upper bound on the emissions.

[22] Again, this is assuming a drift rate of 0.02%.

(2) Regulation 6-31

BAAQMD Regulation 6-311 states that no person shall discharge particulate matter into the atmosphere at a rate in excess of that specified in Table 1 of the Rule for the corresponding process weight rate. Assuming the process weight rate for the cooling tower remains at or above the maximum level specified in Table 1, the rule establishes a maximum emission rate of 40 lb/hr. Unlike for Regulation 6-310, the District provided no justification for its decision to not require monitoring to assure compliance with this limit.

Using the PM-10 emission factor cited by the District in its calculations for Regulation 6-310, EPA estimates the emissions from S-29 to be in excess of 40 lb/hr. While the District stated that the emission factor represents a more conservative estimate of the emissions than the actual data provided by the refineries, it did not say how conservative the factor is. As a result, the District's monitoring decision is unsupported by the record and EPA finds that the Permit fails to meet the Part 70 standard that it contain periodic monitoring sufficient to yield reliable data that are representative of the source's compliance with its terms. *See* 40 C.F.R. § 70.6(a)(3)(i)(B). Therefore, EPA is granting Petitioner's request to object to the Permit. The Permit must include periodic monitoring adequate to assure compliance with BAAQMD Regulation 6-311. *See* 40 C.F.R. § 70.6(a)(3)(i)(B).

(3) Regulation 6-305

BAAQMD Regulation 6-305 states that, "a person shall not emit particles from any operation in sufficient number to cause annoyance to any other person...This Section 6-305 shall only apply if such particles fall on real property other than that of the person responsible for the emission." Nuisance requirements such as this may be enforced by EPA and the District at any time and there is no practical monitoring program that would enhance the ability of the permit to assure compliance with the applicable requirement. Therefore, EPA is denying Petitioner's request to object to the Permit as it pertains to monitoring for BAAQMD Regulation 6-305.

(4) Regulation 6-301

BAAQMD Regulation 6-301 states that a person shall not emit from any source for a period or periods aggregating more than three minutes in any hour, a visible emission which is as dark or darker than No. 1 on the Ringelmann Chart. While the Statement of Basis does not contain a justification for the District's decision that monitoring is not required for this standard, the District stated the following in response to public comments: "The District has prepared an analysis based on the AP-42 factors for particulate, which are very conservative, and has indeed determined that 'it is virtually impossible for cooling towers to exceed visible or grain loading limitations.' The calculations show that the particulate grain loading is a hundredth or less than the 0.15 gr/dscf standard due to the large airflows. When the grain loading is so low, visible emissions are not expected." 2003 CRTC at 59. EPA finds the District's assessment of the visible emissions to be reasonable and that Petitioner has not demonstrated otherwise. Therefore,

EPA is denying Petitioner's request to object to the Permit as it pertains to monitoring for BAAQMD Regulation 6-301.

4. Monitoring of Pressure Relief Valves

Petitioner alleges that the Permit must include additional monitoring to assure that all pressure relief valves at the facility are in compliance with the requirements of SIP-approved District Regulation 8-28 (Episodic Releases from Pressure Relief Valves). Petition at 36.

Regulation 8-28 requires that within 120 days of the first "release event" at a facility, the facility shall equip each pressure relief device of that source with a tamperproof tell-tale indicator that will show that a release has occurred since the last inspection. Regulation 8-28 also requires that a release event from a pressure relief device be reported to the APCO on the next working day following the venting. Petitioner states that neither the regulation nor the Permit includes any monitoring requirements to ensure that the first release event of a relief valve would ever be recorded, and that available tell-tale indicators or another objective monitoring method should be required for all pressure relief valves at the refinery, regardless of a valve's release event status.

First, EPA believes that the requirement that a facility report all release events to the District is adequate to ensure that the first release event would be recorded. EPA also notes that the refinery is subject to the title V requirement to certify compliance with all applicable requirements, including Regulation 8-28. See 40 C.F.R. § 70.6(c)(5). Thus, EPA does not have a basis to determine that the reporting requirement would not assure compliance with the applicable requirement at issue.

For the reasons stated above, EPA is denying the Petition on this issue

5. Additional Monitoring Problems Identified by Petitioner

Petitioner claims that several sources with federally enforceable limits under BAAQMD Regulation 6 do not have monitoring adequate to assure compliance. The sources and limits at issue are discussed separately below.

Sulfur Storage Pit (S-157) / BAAQMD Regulations 6-301 and 6-310

BAAQMD Regulation 6 contains two particulate matter emissions standards for which Petitioner objects to the absence of monitoring. Specifically, BAAQMD Regulation 6-301 limits visible emissions to less than Ringelmann No. 1 and Regulation 6-310 limits the emissions to 0.15 gr. per dscf. Although Regulation 6 does not contain periodic monitoring requirements for either of the standards, the District declined to impose monitoring on this source.

The December 1, 2003 Statement of Basis provides the District's justification for not

requiring monitoring. Specifically, the District stated, "Source is capable of exceeding visible emissions or grain loading standard only during process upset. Under such circumstances, other indicators will alert the operator that something is wrong." *See* December 1, 2003 Statement of Basis, n. 4, at 23. If the source is not capable of exceeding the emission standards at times other than process upsets, it is reasonable that the District would not require regularly scheduled monitoring during normal operations. However, if, as stated by the District, S-157 is capable of exceeding the emission standards during process upsets, monitoring during those periods may be necessary. While the District stated that indicators would alert the operator that something is wrong in the event of a process upset, the District failed to demonstrate how the indicators or the operator's response would assure compliance with the applicable limits.

EPA finds in this case that the District's decision to not require monitoring is not adequately supported by the record. Therefore, EPA is granting Petitioner's request to object to the Permit as it pertains to monitoring for S-157. The District must re-open the Permit to include periodic monitoring that yields reliable data that are representative of the source's compliance with the permit or further explain in the Statement of Basis why monitoring is not needed.

b. Lime Slurry Tanks (S-174 and S-175) / BAAQMD Regulations 6-301, 6-310, and 6-311

BAAQMD Regulation 6 contains three standards for which Petitioner objects to the absence of monitoring. Regulation 6-311 sets a variable emission limit depending on the process weight rate and the requirements of 6-301 and 6-310 are described above. Regulation 6 does not contain periodic monitoring requirements for any of the standards and the District did not impose monitoring on these sources.

As in the previous case for source S-157, the Statement of Basis states that the District did not require monitoring to assure compliance with Regulations 6-301 and 6-310 because the "source is capable of exceeding visible emissions or grain loading standard only during process upset. Under such circumstances, other indicators will alert the operator that something is wrong." *See* December 1, 2003 Statement of Basis, n. 4, at 23. The Statement of Basis is silent on the District's monitoring decision for Regulation 6-311. Therefore, for the reasons stated above, EPA is granting Petitioner's request to object to the Permit as it pertains to monitoring for sources S-174 and S-175 to assure compliance with Regulations 6-301, 6-310, and 6-311. The District must reopen the Permit to include periodic monitoring or further explain in the Statement of Basis why monitoring is not needed.

c Diesel Backup Generators (S-240, S-241, and S-242) / BAAQMD Regulations 6-303.1 and 6-310

BAAQMD Regulation 6 contains two particulate matter emissions standards for which Petitioner objects to the absence of monitoring. The requirement of Regulation 6-310 is described above and Regulation 6-303.1 limits visible emissions to Ringelmann No. 2.

Regulation 6 does not contain periodic monitoring requirements for any of the standards and the District did not impose monitoring on these sources.

As a preliminary matter, EPA notes that opacity monitoring is generally not necessary for California sources firing on diesel fuel, based on the consideration that sources in California usually combust low-sulfur fuel.[23] Therefore, EPA is denying Petitioner's request to object to the Permit as it pertains to monitoring for Regulation 6-303.1.

With regard to Regulation 6-310, the December 1, 2003 Statement of Basis sets forth the basis for the District's decision that monitoring is not necessary. Specifically, the District states, "No monitoring [is] required because this source will be used for emergencies and reliability testing only." While it is true that Condition 18748 states these engines may only be operated to mitigate emergency conditions or for reliability-related activities (not to exceed 100 hours per year per engine), this condition is not federally enforceable. Absent federally enforceable restrictions on the hours of operation, the District's decision not to require monitoring is not adequately supported. Therefore, EPA is granting Petitioner's request to object to the Permit as it pertains to Regulation 6-310. The District must reopen the Permit to add periodic monitoring to assure compliance with the applicable requirement or further explain in the statement of basis why it is not necessary.

d. FCCU Catalyst Regenerator (S-5) and Fluid Coker (S-6) / BAAQMD Regulation 6-305

BAAQMD Regulation 6 contains one particulate matter emission standard for which Petitioner objects to the absence of monitoring. Regulation 6 does not contain periodic monitoring requirements for any of the standards and the District did not impose monitoring on these sources.

BAAQMD Regulation 6-305 states that, "a person shall not emit particles from any operation in sufficient number to cause annoyance to any other person...This Section 6-305 shall only apply if such particles fall on real property other than that of the person responsible for the emission." Petitioner has failed to establish that there is any practical monitoring program that would enhance the ability of the permit to assure compliance with the applicable requirement. Therefore, EPA is denying Petitioner's request to object to the Permit as it pertains to monitoring for BAAQMD Regulation 6-305.

e. Coke Transport, Catalyst Unloading, Carbon Black Storage, and Lime Silo (S-8, S-10, S-11, and S-12) / BAAQMD Regulation 6-311.

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[23] Per CAPCOA/CARB/EPA Region IX agreement. *See Approval of Title V Periodic Monitoring Recommendations*, June 24, 1999.

BAAQMD Regulation 6 contains one particulate matter emission standard for which Petitioner objects to the absence of monitoring. Specifically, BAAQMD Regulation 6-311 sets a variable emission limit depending on the process weight rate. Regulation 6 does not contain periodic monitoring requirements for any of the standards and the District did not impose monitoring on these sources.

For all four emission sources, the Permit requires monitoring with respect to Regulations 6-301 and 6-310 but not 6-311. Given this apparent conflict and the failure of the Statement of Basis to discuss the absence of monitoring, EPA finds that the District's decision in this case is not adequately supported by the record. Therefore, EPA is granting Petitioner's request as it pertains to monitoring for sources S-8, S-10, S-11, and S-12. The District must reopen the Permit to include periodic monitoring for Regulation 6-311 that yields reliable data that are representative of the source's compliance with the permit or explain in the Statement of Basis why monitoring is not needed.

H. Miscellaneous Permit Deficiencies

1 Missing Federal Requirements for Flares (Subpart CC)

Petitioner states that the District incorrectly determined that Valero flares are categorically exempt from 40 C.F.R. § 63 Subpart CC (NESHAP for Petroleum Refineries). Petitioner further states that "EPA disagreed with the District's claim that the flares qualify for a categorical exemption from Subpart CC when used as an alternative to the fuel gas system," and that the Valero Permit and Statement of Basis contain incorrect applicability determinations for flares S-18 and S-19, and that there is not enough information to determine applicability for flares S-16 and S-17. Petitioner states that for all flares subject to Subpart CC, the Permit must include all applicable requirements, including 40 C.F.R. § 63 Subpart A, by reference from 40 C.F.R. § 63 Subpart CC. Petitioner goes on to note that Petitioner has requested in past comments that the District determine the potential applicability of a number of federal regulations to the Valero flares, including 40 C.F.R. § 63 Subpart A, 40 C.F.R. § 63 Subpart CC, and 40 C.F.R. § 60 Subpart A, but that the District did not do so. Petitioner notes that given a lack of relevant information, Petitioner was unable to make an independent evaluation of applicability. Petitioner also alleges that EPA agreed with Petitioner that the District failed to provide sufficient information for the applicability determinations for flares S-16 and S-70 via Attachment 2 of EPA's October 8 comment letter. Finally, Petitioner states that EPA must object to the Permit until the District provides a sufficient analysis regarding the applicability of these federal rules to the Valero flares, and until the Permit contains all applicable requirements.

a. 40 C.F.R. Part 60, Subpart A

EPA finds that the applicability of 40 C.F.R. § 60 Subpart A is adequately addressed in the December 16, 2004 Statement of Basis for Valero. *See* Statement of Basis at 18 (Dec. 16, 2004). The District has included a table on page 18 of the December 16, 2004 Statement of Basis

indicating applicability of NSPS Subpart A to each of Valero's flares. Therefore, EPA is denying the Petition on this issue.

b. 40 C.F.R. Part 63, Subparts A and CC

40 C.F.R. Part 63, Subpart CC contains the Maximum Achievable Control Technology ("MACT") requirements for petroleum refineries. Under Subpart CC, the owner or operator of a Group 1 miscellaneous process vent, as defined in § 63.641, must reduce emissions of Hazardous Air Pollutants either by using a flare that meets the requirements of section 63.11 or by using another control device to reduce emissions by 98% or to a concentration of 20 ppmv. 40 C.F.R. § 63.643(a)(1). If a flare is used, a device capable of detecting the presence of a pilot flame is required. 40 C.F.R. § 63.644(a)(2).

The applicability provisions of Subpart CC are set forth in section 63.640, "Applicability and designation of affected source." Section 63.640(a) provides that Subpart CC applies to petroleum refining process units and related emissions points. The Applicability section further provides that affected sources subject to Subpart CC include emission points that are "miscellaneous process vents." 40 C.F.R. § 63.640(c)(1). The Applicability section also provides that affected sources do not include emission points that are routed to a fuel gas system. 40 C.F.R. § 63.640(d)(5). Gaseous streams routed to a fuel gas system are specifically excluded from the definition of "miscellaneous process vent," as are "episodic or nonroutine releases such as those associated with startup, shutdown, malfunction, maintenance, depressuring, and catalyst transfer operations." 40 C.F.R. § 63.641.

The District's Statement of Basis indicates that flares S-18 and S-19 are not subject to MACT Subpart CC pursuant to the exemption set forth in 40 C.F.R. § 63.640(d)(5). *See* December 16, 2004 Statement of Basis at 18. In the BAAQMD February 15, 2005 Letter, BAAQMD again asserted section 63.640(d)(5) as a basis for finding that the refinery's flares are not required to meet the standards in Subpart CC. EPA continues to believe that a detailed analysis of the configuration of the flare and compressor is required to exempt a flare on the basis that it is part of the fuel gas system.

BAAQMD's February 15, 2005 letter also provides an alternative rationale that gases vented to the refinery's flares are not within the definition of "miscellaneous process vents." Specifically, BAAQMD asserts that the flares are not miscellaneous process vents because they are used only to control "episodic and nonroutine" releases. As BAAQMD states:

> At all of the affected refineries, process gas collected by the gas recovery system are routed to flares only under two circumstances: (1) situations in which, due to process upset or equipment malfunctions, the gas pressure in the flare header rises to a level that breaks the water seal leading to the flares; or (2) situations in which, during process startups, shutdown, malfunction, maintenance, depressuring [sic], and catalyst transfer operations are, by definition, not miscellaneous process vents, and are not subject to

Subpart CC

EPA agrees that a flare used only under the two circumstances described by the District would not be subject to Subpart CC because such flares are not used to control miscellaneous process vents as that term is defined in § 63.641. According to the BAAQMD February 15, 2005 Letter, BAAQMD intends to revise the Statement of Basis to further explain its rationale that Subpart CC does not apply to the Bay Area refinery flares, and intends to solicit public comment on its rationale.

Because the Permit and the Statement of Basis for Valero's flares S-18 and S-19 contain contradictory information with regard to the use of these flares, EPA agrees with Petitioner that the Statement of Basis is lacking a sufficient analysis regarding the applicability of MACT CC to these flares. Therefore, EPA is granting the Petition on this issue. BAAQMD must reopen the Permit to address applicability in the Statement of Basis, and, if necessary, to include the flare requirements of MACT Subpart CC in the Permit.

2 Basis for Tank Exemptions

Petitioner claims that the statement of basis and the Permit lack adequate information to support the proposed exempt status for numerous tanks identified in Table IIB of the Permit.

Table IIB of the Permit contains a list of 43 emission sources that have applicable requirements in Section IV of the Permit but that were determined by the District to be exempt from BAAQMD Regulation 2, which specifies the requirements for Authorities to Construct and Permits to Operate. Rule 1 of the regulation contains numerous exemptions that are based on a variety of physical and circumstantial grounds. EPA agrees with Petitioner that the Permit itself contains insufficient information to determine the basis for the exempt status of the equipment with respect to the exemptions in the rule. However, for most of the sources in Table IIB, Petitioner's claim that the Statement of Basis lacks the information is factually incorrect. Petitioner is referred to pages 94-99 of the Statement of Basis that accompanied the Permit issued by the District on December 1, 2003. Nonetheless, EPA is granting Petitioner's request on a limited basis for the reasons set forth below.

EPA's regulations state that the permitting authority must provide the Agency with a statement of basis that sets forth the legal and factual basis for the permit conditions. 40 C.F.R. § 70.7(a)(5). EPA has provided guidance on the content of an adequate statement of basis in a letter dated December 20, 2001, from Region V to the State of Ohio[24] and in a Notice of Deficiency (NOD) issued to the State of Texas.[25] These documents describe several key elements of a statement of basis, specifically noting that a statement of basis should address any

[24] The letter is available at: http://www.epa.gov/rgytgmj/programs/artd/air/title5/t5memos/sbguide.pdf.

[25] 67 Fed. Reg. 732 (January 7, 2002)

federal regulatory applicability determinations. The Region V letter also recommends the inclusion of topical discussions on issues including but not limited to the basis for exemptions. Further, in response to a petition filed in regard to the title V permit for the Los Medanos Energy Center, EPA concluded that a statement of basis should document the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and EPA with a record of the applicability and technical issues surrounding the issuance of the permit. Such a record ought to contain a description of the origin or basis for each permit condition or exemption. *See, Los Medanos*, at 10.

As stated in *Los Medanos*, the failure of a permitting authority to meet the procedural requirement to provide a statement of basis does not necessarily demonstrate that the title V permit is substantively flawed. In reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, EPA considers whether the petitioner has demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. *See* CAA § 505(b)(2) (objection required "if the petitioner demonstrates . . . that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]"); *see also* 40 C.F.R. § 70.8(c)(1). Thus, where the record as a whole supports the terms and conditions of the permit, flaws in the statement of basis generally will not result in an objection. *See e.g., Doe Run*, at 24-25. In contrast, where flaws in the statement of basis resulted in, or may have resulted in, deficiencies in the title V permit, EPA will object to the issuance of the permit.

With regard to the Valero Permit, the majority of the sources listed in Table IIB are identified in the December 1, 2003 Statement of Basis along with a citation from Regulation 2 describing the basis of the exemption. For the sources that fall within this category, EPA finds that the permit record supports the District's determination for the exempt status of the equipment. However, in reviewing the December 16, 2004 Statement of Basis, EPA noted that three of the sources listed in Table IIB of the Permit are not included in the statement of basis with the corresponding citations for the exemptions.[26] For these sources, the failure of the record to support the terms of the Permit is adequate grounds for objecting to the Permit. Therefore, EPA is granting Petitioner's request to object to the Permit with respect to the listing of exempt sources in Table IIB but only as the request pertains to the three sources identified herein. Although EPA is not aware of other errors, the District should review the circumstances for all of the sources in Table IIB and the corresponding table in the statement of basis to further ensure that the Permit is accurate and that the record adequately supports the Permit. EPA also encourages the District to add the citation for each exemption to Table IIB as was done for the ConocoPhillips, Chevron, and Shell permits.

3 Public Participation

[26]Compare Table IIB of the Permit with the December 1, 2003 statement of basis for the LPG Truck Loading Rack, the TK-2710 Fresh Acid Tank, and the Cogeneration Plant Cooling Tower.

Petitioner argues that the District did not, in a timely fashion, make readily available to the public, compliance information that is relevant to evaluating whether a schedule of compliance is necessary. Specifically, Petitioner asserts that it had to make several requests under the California Public Records Act to obtain "relevant information concerning NOVs issued to the facility between 2001 and 2004" and the "2003 Annual Report and other compliance information, which is not readily available." Petitioner states that it took three weeks for the District to produce the information requested in Petitioner's "2003 PRA request." Petitioner contends that it expended significant resources to obtain the data and received the data so late in the process that they could not be sufficiently analyzed.

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, such as Petitioner's claims here that the District failed to comply with public participation requirements, EPA considers whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. *See* CAA, Section 505(b)(2)(objection required "if the petitioner demonstrates ... that the permit is not in compliance with the requirements of [the Act], including the requirements of the applicable [SIP].") EPA's title V regulations specifically identify the failure of a permitting authority to process a permit in accordance with procedures approved to meet the public participation provisions of 40 C.F.R. § 70.7(h) as grounds for an objection. 40 C.F.R. § 70.8(c)(3)(iii). District Regulations 2-6-412 and 2-6-419 implement the public participation requirements of 40 C.F.R. § 70.7(h). District Regulation 2-6-412, *Public Participation, Major Facility Review Permit Issuance*, approved by EPA as meeting the public participation provisions of 40 C.F.R. § 70.7(h), provides for notice and comment procedures that the District must follow when proposing to issue any major facility review permit. The public notice, which shall be published in a major newspaper in the area where the facility is located, shall identify, *inter alia*, information regarding the operation to be permitted, any proposed change in emissions, and a District source for further information. District Regulation 2-6-419, *Availability of Information*, requires the contents of the permit applications, compliance plans, emissions or compliance monitoring reports, and compliance certification reports to be available to the public, except for information entitled to confidential treatment.

Petitioner fails to demonstrate that the District did not process the permit in accordance with public participation requirements. The District duly published a notice regarding the proposed initial issuance of the permit. The notice, *inter alia*, referenced a contact for further information. The permit application, compliance plan, emissions or compliance monitoring reports, and compliance certification reports are available to the public through the District's Web site or in the District's files, which are open to the public during business hours. Petitioner admits that it ultimately obtained the compliance information it sought, albeit later than it wished. Petitioner fails to show that the perceived delay in receiving requested documents resulted in, or may have resulted in, a deficiency in the Permit. Therefore, EPA denies the Petition on this issue.

IV TREATMENT, IN THE ALTERNATIVE, AS A PETITION TO REOPEN

As explained in the Procedural Background section of this Order, EPA received and dismissed a prior petition ("2003 OCE Petition") from this Petitioner on a previous version of the Permit at issue in this Petition. EPA's response in this Order to issues raised in this Petition that were also included in the 2003 OCE Petition also constitutes the Agency's response to the 2003 Petition. Furthermore, EPA considers the Petition validly submitted under CAA section 505(b)(2). However, if the Petition should be deemed to be invalid under that provision, EPA also considers, in the alternative, the Petition and Order to be a Petition to Reopen the Permit and a response to a Petition to Reopen the Permit, respectively.

V CONCLUSION

For the reasons set forth above, and pursuant to section 505(b)(2) of the Clean Air Act, I deny in part and grant in part OCE's Petition requesting that the Administrator object to the Valero Permit. This decision is based on a thorough review of the draft permit, the final Permit issued December 16, 2004, and other documents pertaining to the issuance of the Permit.

MAR 1 5 2005

Date

Stephen L. Johnson
Acting Administrator

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF ONYX ENVIRONMENTAL SERVICES	)
	) ORDER RESPONDING TO) PETITIONERS' REQUEST THAT
Petition number V-2005-1 CAAPP No. 163121AAP Proposed by the Illinois Environmental Protection Agency	) THE ADMINISTRATOR OBJECT) TO ISSUANCE OF A STATE) OPERATING PERMIT)

ORDER AMENDING PRIOR ORDER PARTIALLY DENYING AND PARTIALLY GRANTING PETITION FOR OBJECTION TO PERMIT

EPA has become aware of a factual error in the February 1, 2006 Order Responding to Petitioners' Request that the Administrator Object to Issuance of a proposed State Operating Permit for Onyx Environmental Services. To correct that error, I am amending the February 1, 2006 Order by striking out the section entitled "VI. Monitoring" and replacing it with the language appearing below. As a result of the correction, I am hereby granting the petition on that issue.

The amended language for section VI is as follows:

VI. Monitoring

The Petitioners argue that the Administrator must object to the proposed Onyx permit because it fails to include conditions that meet the legal requirements for monitoring. The Petitioners cite condition 7.1.8.b.ii. on page 56 of the proposed Onyx permit, which provides that Onyx must install, calibrate, maintain, and operate Particulate Matter Continuous Emission Monitors (PM CEMs) to demonstrate compliance. Petitioners note that the next clause provides that the permittee need not comply with the requirement to "install, calibrate, maintain, and operate the PM CEMs until such time that U.S. EPA promulgates all performance specifications and operational requirements for PM CEMs." Petitioners argue that there are no PM monitoring requirements established in the permit without the obligation to install and operate the PM CEMs, which is contingent on future U.S. EPA action. Petition at 18.

U.S. EPA promulgated the performance specification for PM CEMs (Performance Standard 11) on January 12, 2004. However, U.S. EPA has not yet promulgated the operational requirements for PM CEMs. Accordingly, the requirement to install and operate PM CEMs does not currently apply to Onyx, although the permit properly requires PM CEMs once U.S. EPA promulgates such operational requirements. However, subpart EEE contains other

requirements intended to help assure compliance with the PM limits, including a requirement for bag leak detection monitoring.[6] The Onyx facility is equipped with baghouses, and therefore Onyx is required to operate and maintain a system to detect leaks from the baghouses, but the permit currently lacks provisions requiring a leak detection system. Accordingly, the lack of a currently applicable requirement to operate and maintain PM CEMs does not make the permit deficient under 40 C.F.R. 70.6(a)(3)(i)(B), but Petitioners are correct that the permit lacks monitoring required under other provisions of 40 C.F.R. §70.6, and therefore I am granting the petition on this issue and directing IEPA to revise the permit to incorporate all PM monitoring required for the facility under subpart EEE, including a leak detection system.[7]

I am not revising the Order issued February 1 in any other way and its provisions, other than section VI, remain undisturbed and in effect.

Dated: AUG -9 2006

Stephen L. Johnson
Administrator

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[6] See Final Technical Support Document for HWC MACT Standards, Vol. IV: Compliance with the HWC MACT Standards (July 1999).

[7] Subpart EEE has been amended since the permit was proposed by IEPA, although the requirement for bag leak detection applied to the Onyx facility at the time the permit was proposed. In re-proposing the permit, IEPA should ensure that the permit properly reflects all of the current MACT requirements

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

APR 30 2014

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits

FROM: Stephen D. Page
Director

TO: Regional Air Division Directors, Regions 1-10

This memorandum and attachments provide guidance on satisfying the Clean Air Act title V annual compliance certification reporting and statement of basis requirements. It addresses two outstanding recommendations made by the Office of Inspector General (OIG) in the report titled, "Substantial Changes Needed in Implementation and Oversight of Title V Permits if Program Goals are to be Fully Realized," (OIG Report No. 2005-P-00010):

> *Recommendation 2-1: Develop and issue guidance or rulemaking on annual compliance certification content, which requires responsible officials to certify compliance with all applicable terms and conditions of the permit, as appropriate.*
>
> *Recommendation 2-3: Develop nationwide guidance on the contents of the statement of basis which includes discussions of monitoring, operational requirements, regulatory applicability determinations, explanation of any conditions from previously issued permits that are not being transferred to the title V permit, discussion of streamlining requirements, and other factual information, where advisable, including a list of prior title V permits issued to the same applicant at the plant, attainment status, and construction, permitting, and compliance history of the plant.*

In a February 8, 2013, memorandum to the OIG, the EPA stated its intent to address these two recommendations, as well as similar recommendations from the Clean Air Act Advisory Committee's Title V Task Force (*see* "Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience," April 2006).

The attachments below provide non-binding guidance that responds to OIG recommendations regarding annual compliance certification and statement of basis. The attachments highlight existing statutory and regulatory requirements and guidance issued by the EPA, and state and local permitting authorities. In addition, the attachments highlight key components of the applicable legal requirements and clarifications responsive to certain OIG recommendations. As you are aware, this information was developed in collaboration with EPA regional offices. Note that state and local permitting authorities

also provide guidance on title V requirements; the EPA encourages sources to consult with their state and local permitting authorities to obtain additional information or to obtain specific guidance.

If you have any questions, please contact Juan Santiago, Associate Director, Air Quality Policy Division/OAQPS, at (919) 541-1084, *santiago.juan@epa.gov*.

Attachments

Disclaimer

These documents explain the requirements of the EPA regulations, describes the EPA policies, and recommends procedures for sources and permitting authorities to use to ensure that the annual compliance certification and the statement of basis are consistent with applicable regulations. These documents are not a rule or regulation, and the guidance they contain may not apply to a particular situation based upon the individual facts and circumstances. The guidance does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. The use of non-mandatory language such as "guidance," "recommend," "may," "should," and "can," is intended to describe the EPA policies and recommendations. Mandatory terminology such as "must" and "required" is intended to describe controlling requirements under the terms of the Clean Air Act and the EPA regulations, but the documents do not establish legally binding requirements in and of themselves.

Attachment 1

Implementation Guidance on Annual Compliance Certification Requirements Under the Clean Air Act Title V Operating Permits Program

I. Overview of Title V and Annual Compliance Certification Requirements

Title V of the Clean Air Act (CAA or Act) establishes an operating permits program for major sources of air pollutants, as well as other sources. CAA sections 501-507; 42 U.S.C. Sections 7661-7661f. A detailed history and description of title V of the CAA is available in the preamble discussions of both the proposed and final original regulations implementing title V – the first promulgation of 40 CFR Part 70. *See* 57 FR 32250 (July 21, 1992) (Final Rule); 56 FR 21712 (May 10, 1991) (Proposed Rule). The EPA recently provided further information regarding compliance certification history in a proposed rulemaking titled, "Amendments to Compliance Certification Content Requirements for State and Federal Operating Permits Programs," published on March 29, 2013. 78 FR 19164. Under title V, states are required to develop and implement title V permitting programs in conformance with program requirements promulgated by the EPA in 40 CFR Part 70. Title V requires that every major stationary source (and certain other sources) apply for and operate pursuant to an operating permit. CAA section 502(a) and 503. The operating permit must contain conditions that assure compliance with all of the sources' applicable requirements under the CAA. CAA section 504(a). Title V also states, among other requirements, that sources certify compliance with the applicable requirements of their permits no less frequently than annually (CAA section 503(b)(2)), provides authority to the EPA to prescribe procedures for determining compliance and for monitoring and analysis of pollutants regulated under the CAA (CAA section 504(b)), and requires each permit to "set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." (CAA section 504(c).)

This guidance document focuses on the annual compliance certification, which applies to the terms and conditions of issued operating permits. CAA section 503(b)(2) states that the EPA's regulations implementing title V "shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority." CAA section 504(c) states that each title V permit issued "shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. . . Any report required to be submitted by a permit issued to a corporation under this subchapter shall be signed by a responsible corporate official, who shall certify its accuracy." Additional requirements of compliance certification are described in section 114(a)(3) of the CAA as follows:

> The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance

status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section [availability of information to the public].

CAA section 114(a)(3), 42 U.S.C. section 7414(a)(3). The EPA promulgated regulations implementing these provisions for title V operating permits purposes. Key regulatory provisions regarding compliance certifications are found in 40 CFR section 70.6(c), "Compliance requirements."

II. Overview of Annual Compliance Certification Requirements

The EPA's regulations at 40 CFR section 70.6(c) describe the required elements of annual compliance certifications. Specifically, 40 CFR section 70.6(c)(5)(iii)-(iv) provides that all permits must include the following annual compliance certification requirements:

> (iii) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):
>
> (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.

Appendix E. Maps of Linguistically Isolated Households in the BAAQMD

Figures 1 – 9 show maps generated using EJScreen of the nine counties within the San Francisco Bay Area for which the District regulates air pollution – Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, southwestern Solano, and southern Sonoma counties.[1-2]

[1] EPA's Environmental Justice Screening and Mapping Tool (version 2.11). https://ejscreen.epa.gov/mapper/

[2] EJScreen Technical Documentation, October 2022. https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf

Figure 1: Alameda County, California - Percentage of Limited English Speaking Population and Permitted Title V Facilities.

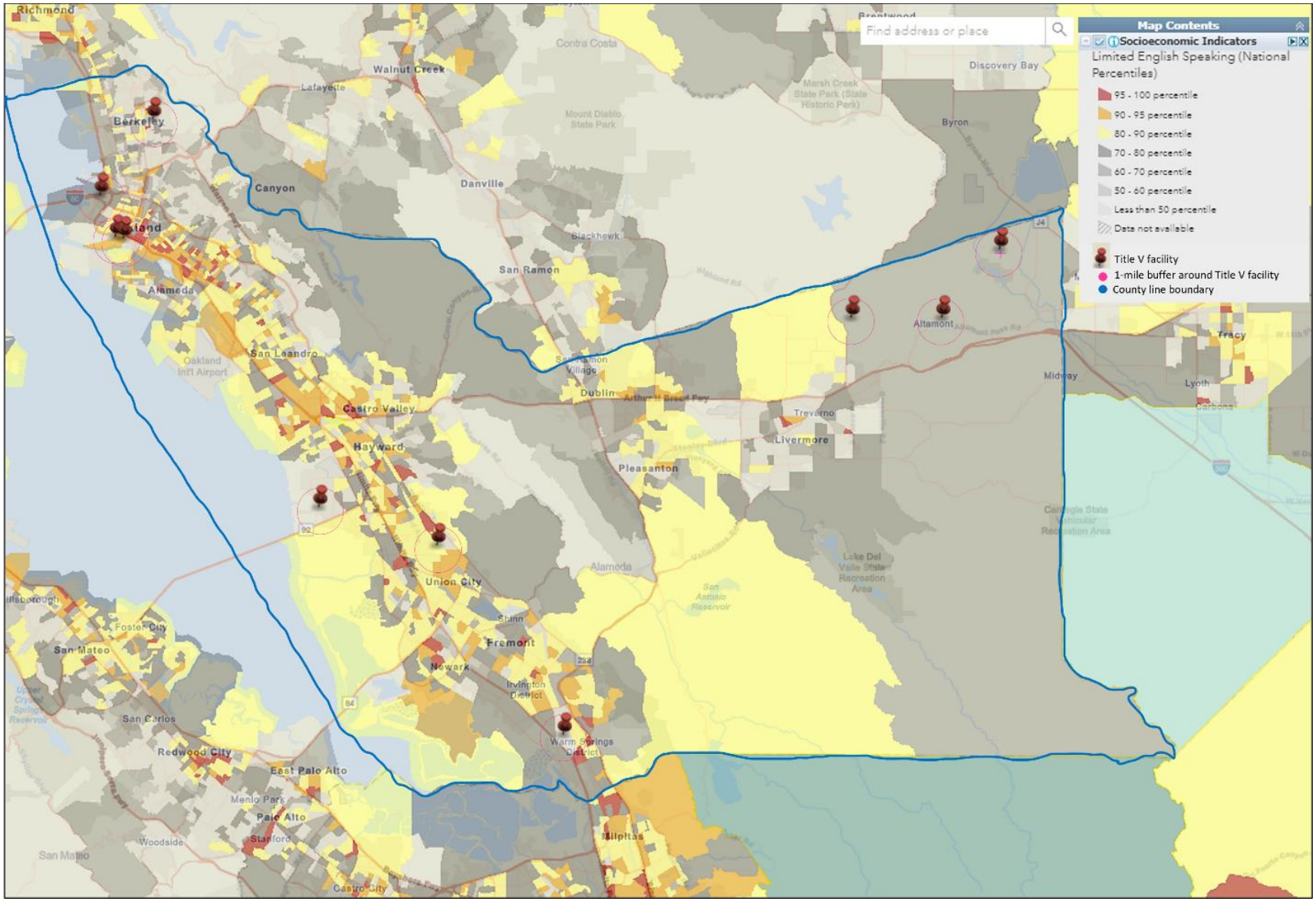


Figure 2: Contra Costa County, California - Percentage of Limited English Speaking Population and Permitted Title V Facilities.

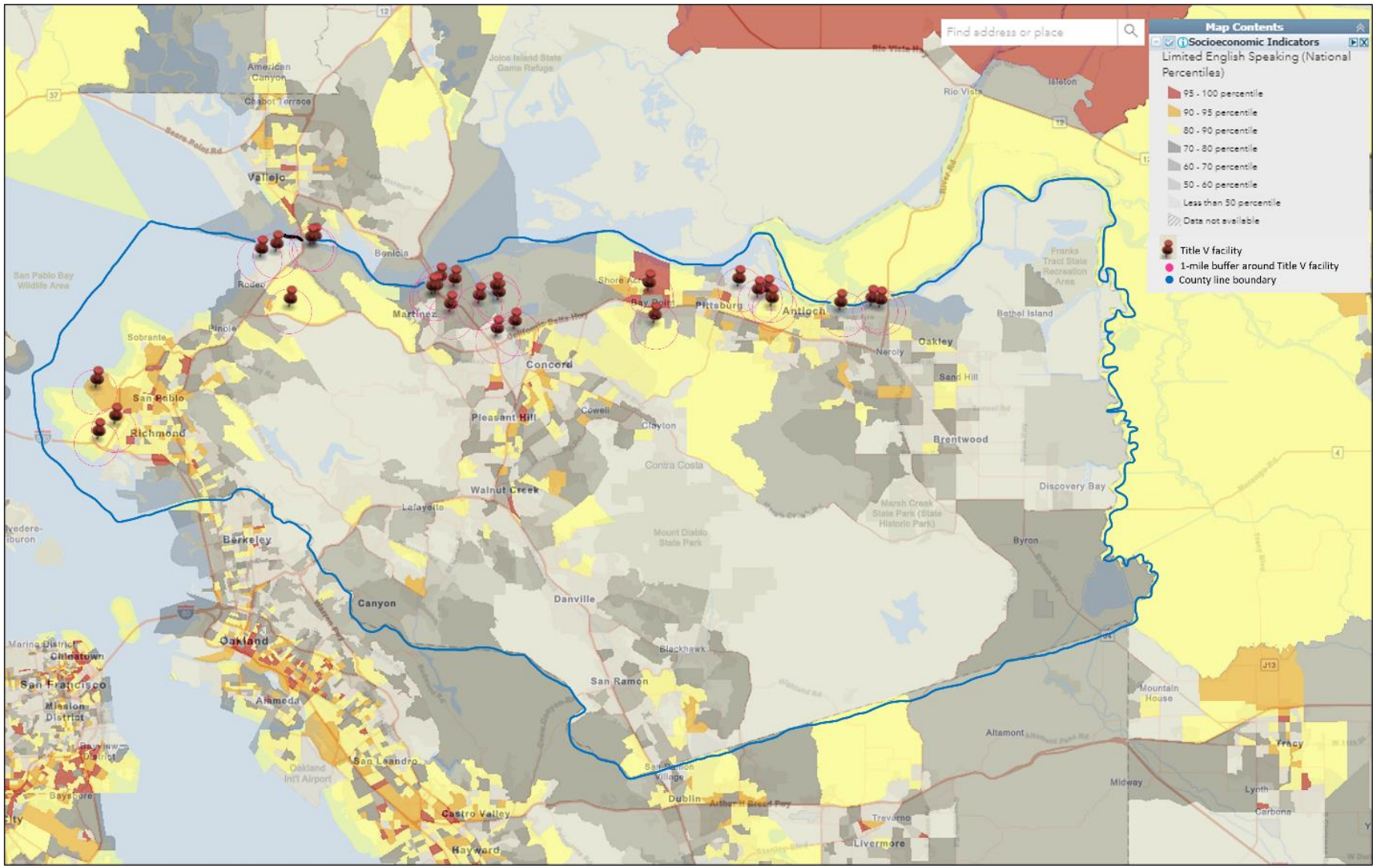


Figure 3: Marin County, California - Percentage of Limited English Speaking Population and Permitted Title V Facilities.

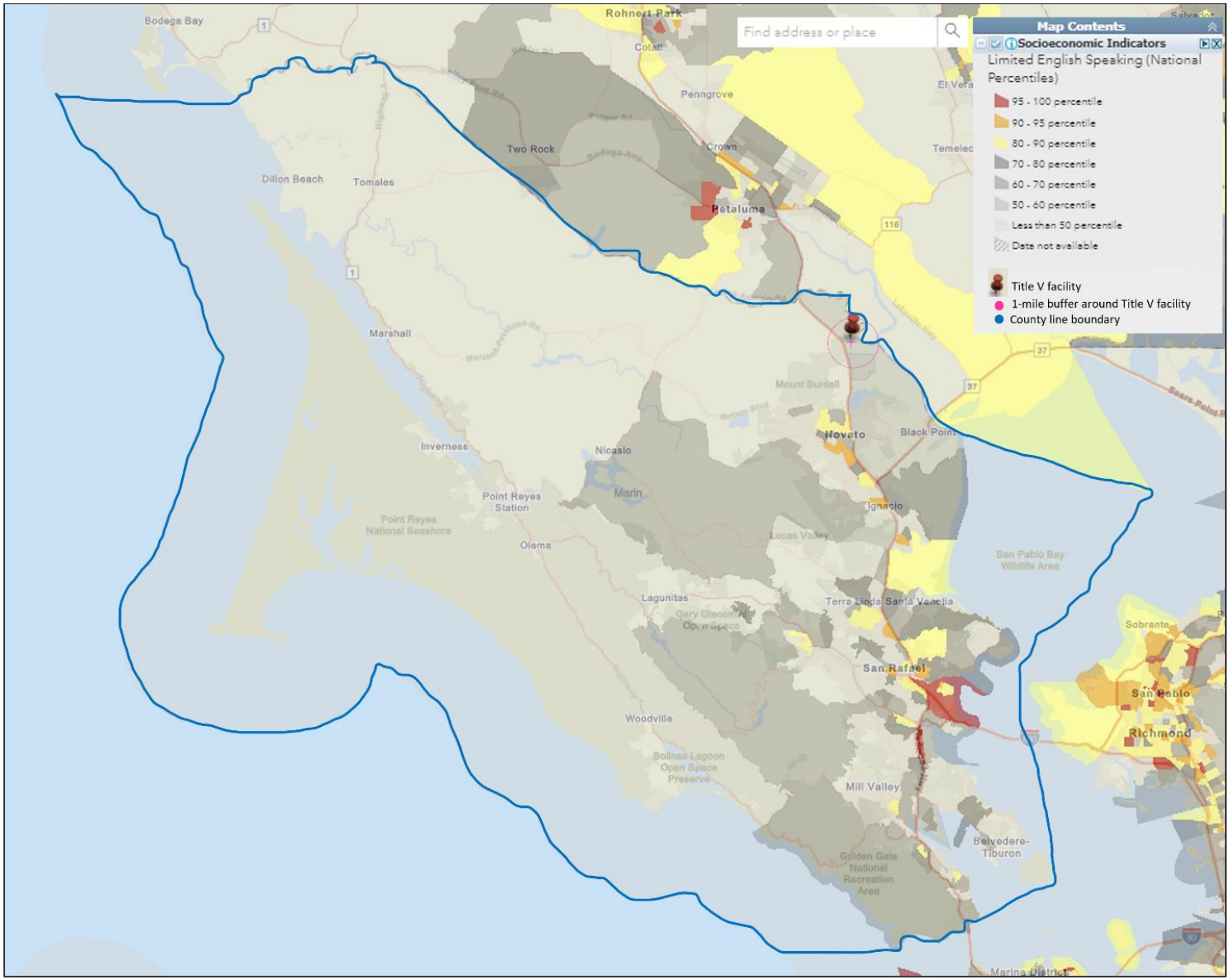


Figure 4: Napa County, California - Percentage of Limited English Speaking Population and No Permitted Title V Facilities.

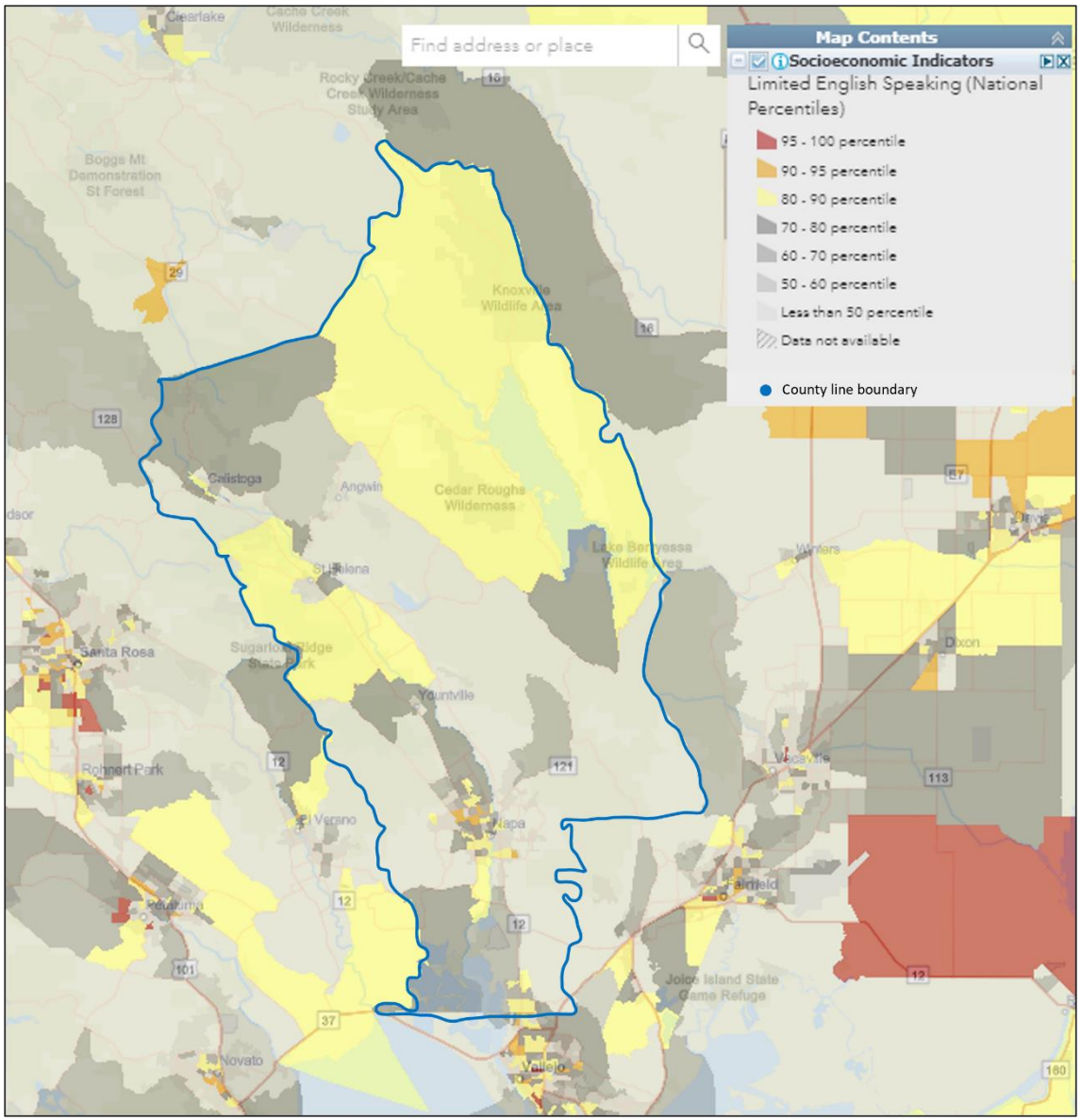


Figure 5: San Francisco County, California - Percentage of Limited English Speaking Population and Permitted Title V Facility.

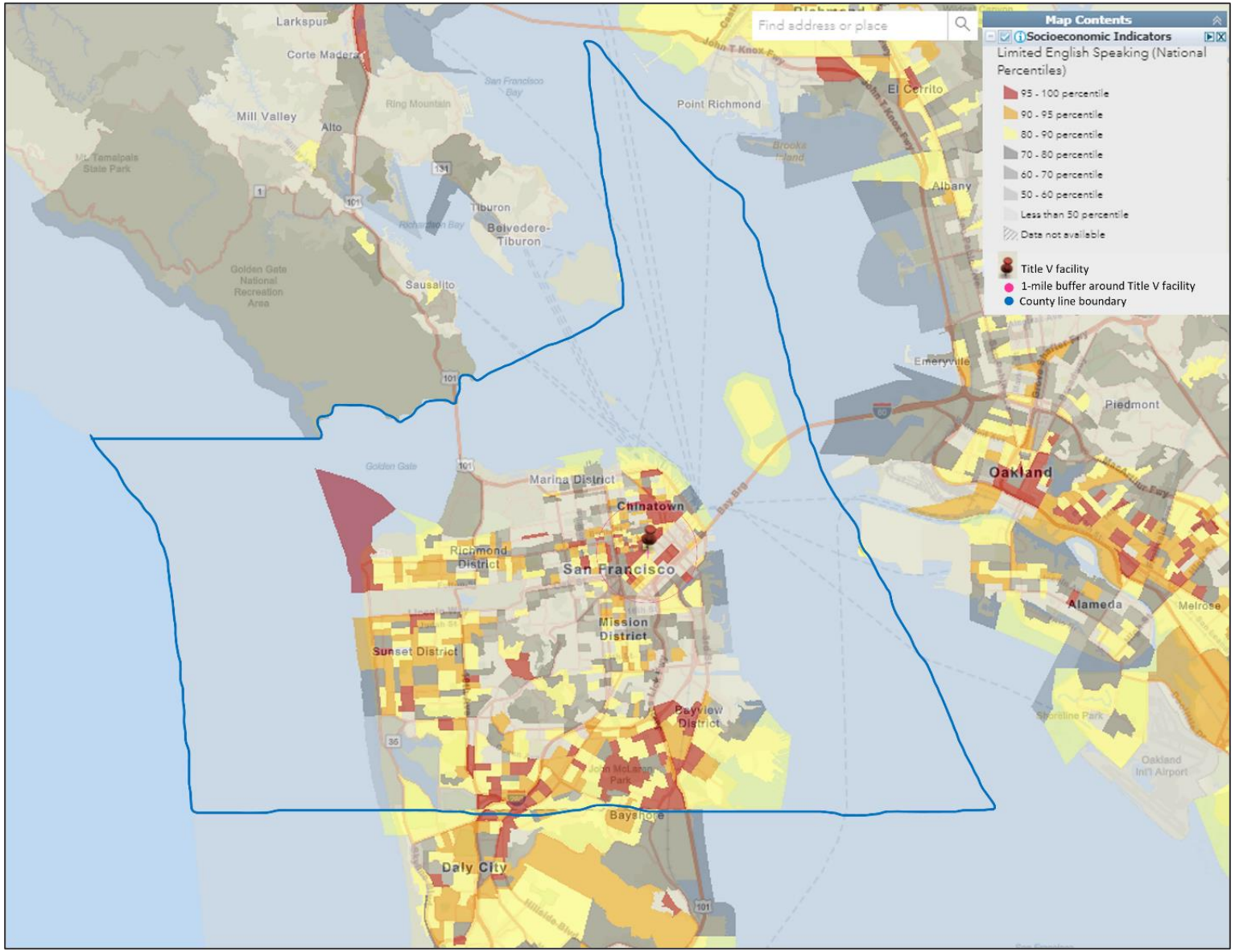


Figure 6: San Mateo County, California - Percentage of Limited English Speaking Population and Permitted Title V Facilities.

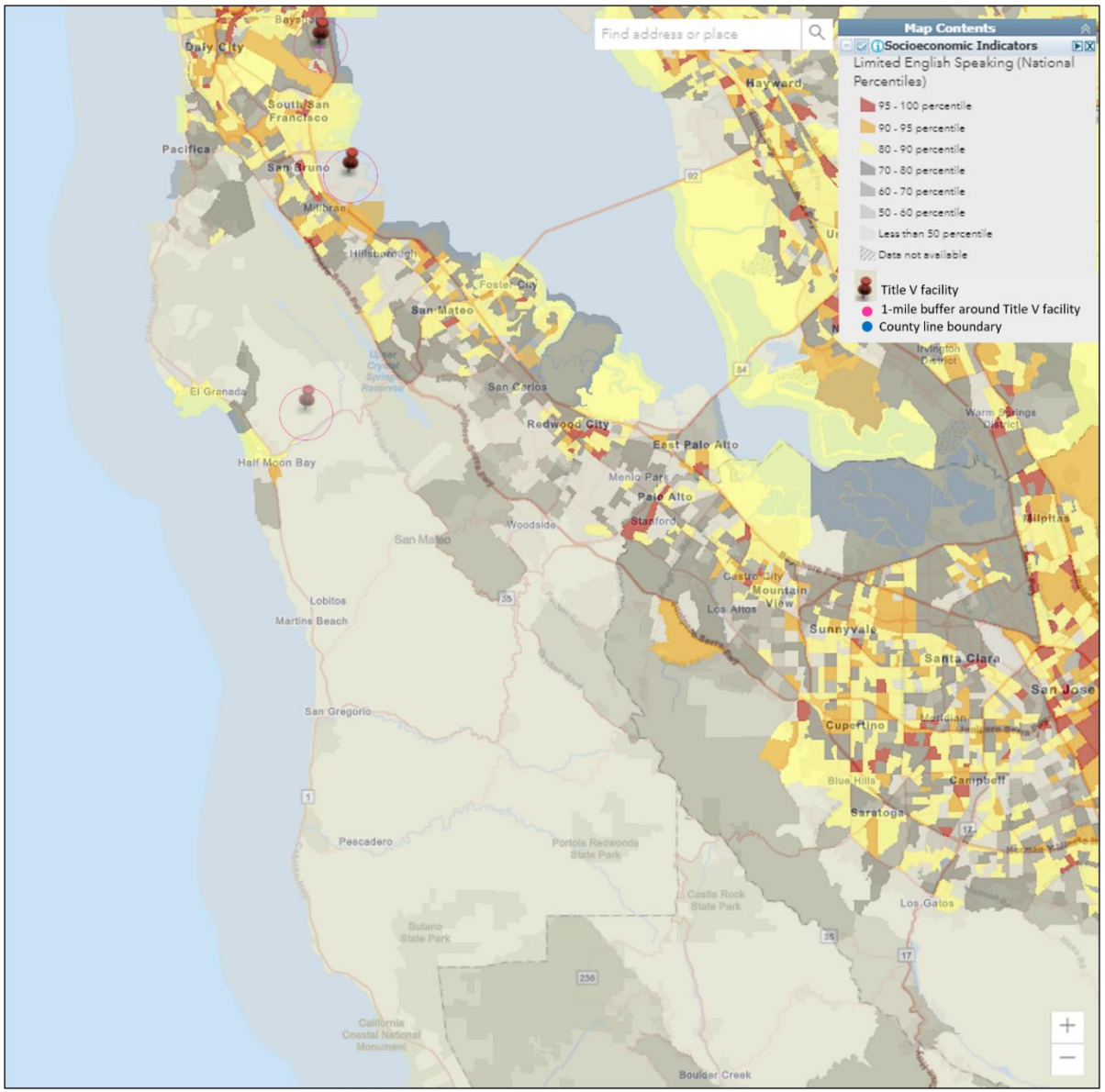


Figure 7: Santa Clara County, California - Percentage of Limited English Speaking Population and Permitted Title V Facilities.

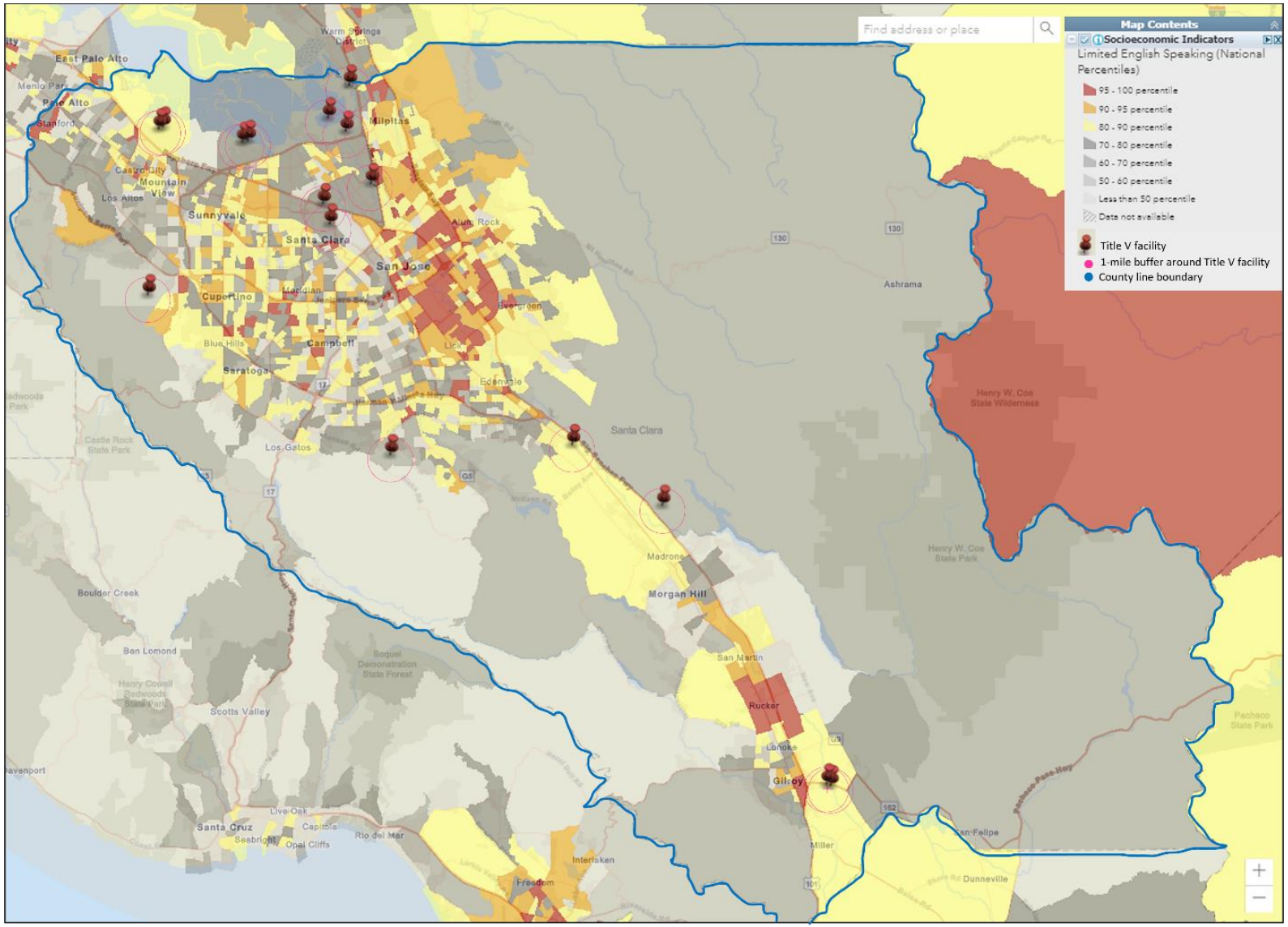


Figure 8: Solano County, California - Percentage of Limited English Speaking Population and Permitted Title V Facilities.

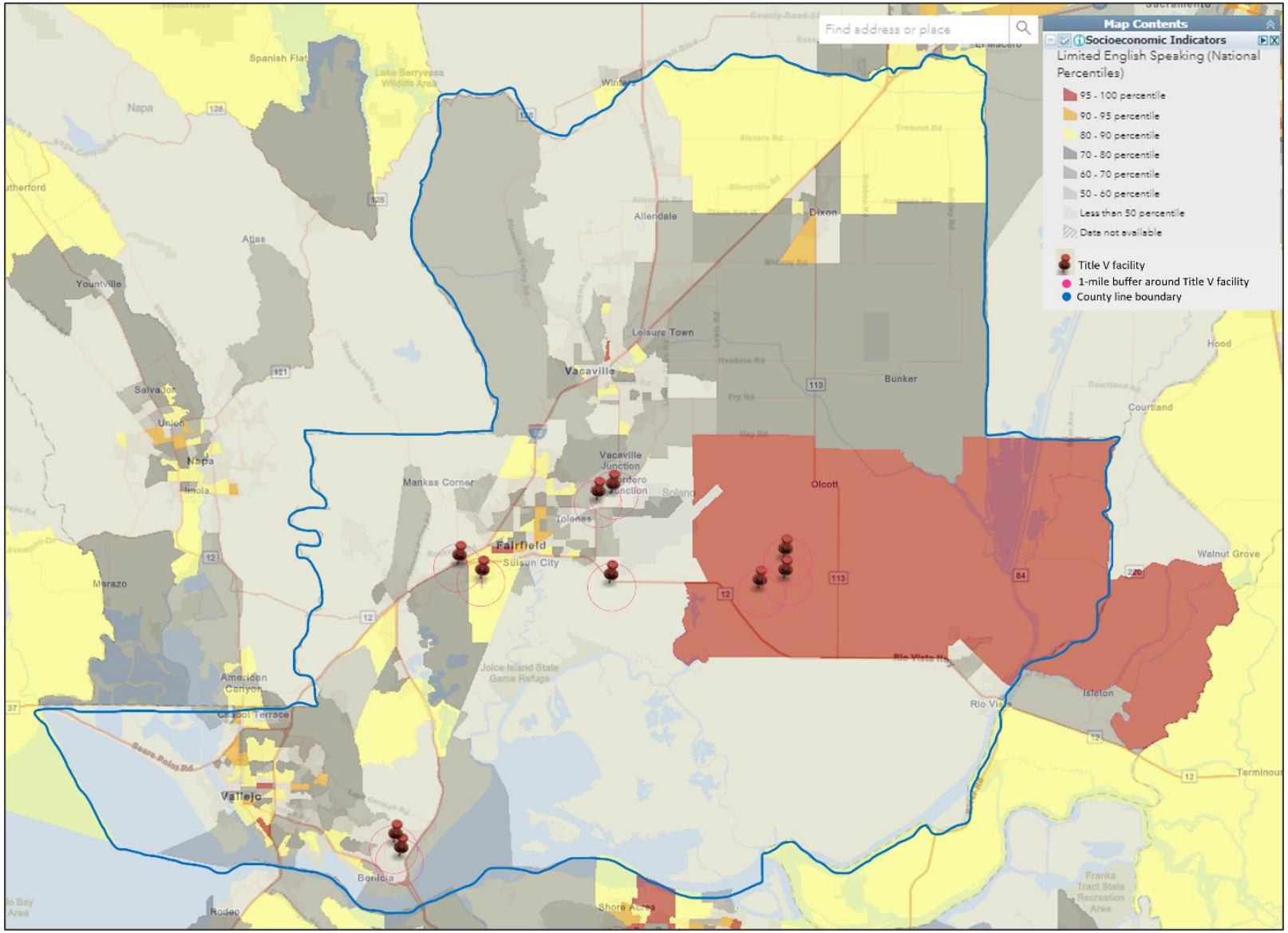
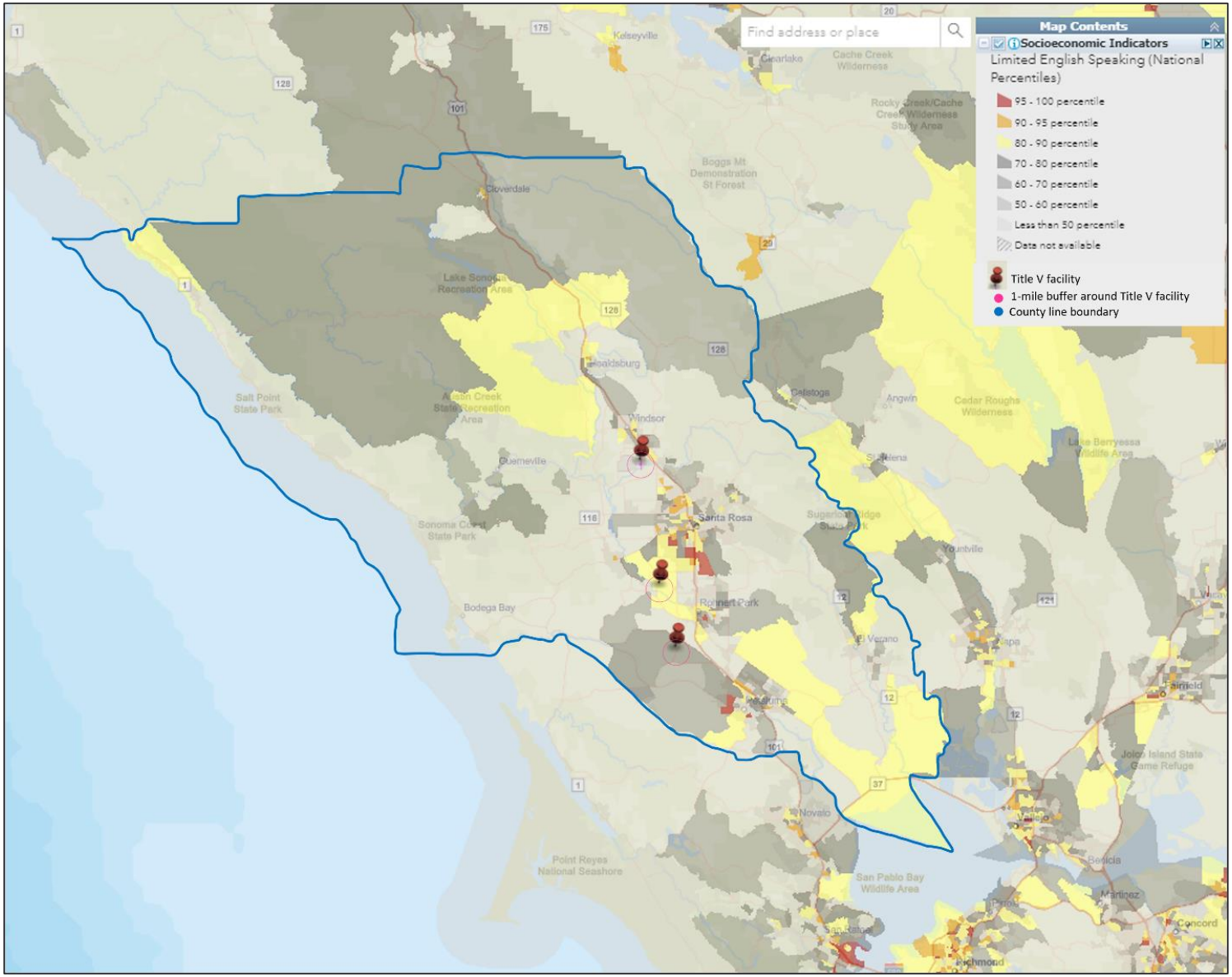


Figure 9: Sonoma County, California - Percentage of Limited English Speaking Population and Permitted Title V Facilities.



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WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

March 30, 2021

In Reply Refer to:
EPA Complaint No. 01RNO-20-R7

Carol S. Comer, Director
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102
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Re: Partial Preliminary Findings for EPA Complaint No. 01RNO-20-R7: Non-Compliance

Dear Director Comer:

This letter conveys partial preliminary findings of the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) in the administrative complaint (Complaint) filed with EPA on September 4, 2020, by the Great Rivers Environmental Law Center on behalf of the National Association for the Advancement of Colored People, Missouri State Conference ("Missouri NAACP"), the NAACP St. Louis City Branch ("St. Louis City NAACP"), and the Dutchtown South Community Corporation (DSCC) against the Missouri Department of Natural Resources (MoDNR). The Complaint alleges that MoDNR discriminated on the basis of race, color and/or national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation, 40 C.F.R. Part 7, when on March 10, 2020, MoDNR issued Part 70 Intermediate Operating Permit OP2020-008 to Kinder Morgan Transmix Company, LLC ("Kinder Morgan").

Consistent with the requirement in 40 C.F.R. § 7.115(c)(1), ECRCO herein sets forth preliminary findings.[1] As described below, ECRCO has not concluded its investigation of EPA complaint number 01RNO-20-R7 or reached final conclusions of fact or law about MoDNR's alleged discrimination on the basis of race, color and/or national origin related specifically to MoDNR's issuance of the air quality permit. We continue to look into the possibility that MoDNR may have discriminated on the basis of race, color and/or national origin as the result of MoDNR's air quality permitting program.

[1] *See* Case Resolution Manual provision Section 5.1 (Jan. 2021) (https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

ECRCO Authority, Complaint Background and Summary of Conclusions

ECRCO is responsible for enforcing several federal civil rights laws that prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency), disability, sex, and age in programs or activities that receive federal financial assistance from the EPA. Pursuant to EPA's nondiscrimination regulation, ECRCO conducted a preliminary review of the Complaint to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). The Complaint alleges that MoDNR issued a permit to Kinder Morgan regarding its emission of various pollutants that are harmful to human health in violation of Title VI and that results in a disproportionate impact on the basis of race, color and/or national origin. The Complaint further alleges that MoDNR has engaged in a pattern and practice of discrimination by ignoring concerns raised over the years about its failure to have in place a "nondiscrimination program," including procedural safeguards as required by the EPA's nondiscrimination regulation. In addition, the Complaint alleges MoDNR did not provide meaningful access for individuals with limited English proficiency (LEP) during its public solicitation for comments related to the pending permitting actions. On September 29, 2020, ECRCO determined that the Complaint met the jurisdictional requirements and identified the following issues for investigation:

1. Whether MoDNR discriminated against a community of color, collectively hereinafter referred to as "Dutchtown," located in St. Louis, MO, on the basis of race, color and/or national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA's implementing regulation, 40 C.F.R. Part 7, by issuing Part 70 Intermediate Operating Permit Number OP2020-008 to the Kinder Morgan Transmix Company, LLC operations;[2] and

2. Whether MoDNR has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to MoDNR's services, programs, and activities for individuals with LEP and individuals with disabilities, and whether the MoDNR has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.[3]

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[2] Title VI of the Civil Rights Act, 42 U.S.C. 2000(d) *et seq*. (prohibiting discrimination on the basis of race, color or national origin); 40 C.F.R. Parts 5 and 7. *See* also U.S. EPA, Chapter 1 of the U.S. EPA's External Civil Rights Compliance Office Compliance Toolkit: Chapter 1, transmittal letter, and FAQs (https://www.epa.gov/sites/production/files/2020-02/documents/toolkit_ecrco_chapter_1-letter-faqs_2017.01.18.pdf). (2017).

[3] *See* Title VI , 42 U.S.C. 2000(d) *et seq*.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § 7.35(a). *See also* U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf); U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR 14207 (March

ECRCO has concluded its investigation with respect to most of the second issue.[4] The first issue remains under investigation.[5] With respect to the second issue, ECRCO has determined that the preponderance of the evidence supports a conclusion that MoDNR failed to comply with its longstanding obligations under the federal nondiscrimination laws and EPA's nondiscrimination regulation to have and implement a nondiscrimination program, including: procedural safeguards required under 40 C.F.R. Parts 5 and 7; and policies and procedures for ensuring meaningful access to MoDNR's services, programs, and activities for individuals with LEP and individuals with disabilities. In addition, ECRCO has determined that MoDNR did not provide meaningful access for individuals with LEP specifically during its public solicitation for comments related to Kinder Morgan permitting actions.

ECRCO's investigation included interviews with the complainants' representative to learn more about their interactions with MoDNR and their documented allegations and to provide information on the investigation process and options for resolution such as a willingness of the complainants to pursue alternative dispute resolution (ADR).[6] On October 19, 2020, the complainants' representatives affirmed to ECRCO that all complainants were interested in pursuing ADR to resolve the Complaint. ECRCO met with MoDNR on October 28, 2020 and again on November 2, 2020, to provide information about the investigation, the complaint resolution processes, and a copy of the Procedural Safeguards Checklist.[7,8] During the November 2, 2020, meeting MoDNR stated it was not interested in pursuing either ADR with the complainants or informal resolution with ECRCO. MoDNR indicated it would provide a response to the Complaint and ECRCO should proceed with the investigation. Accordingly, MoDNR provided its response to the Complaint to ECRCO on November 12, 2020. On

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21, 2006) (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf); U.S. EPA, Procedural Safeguards Checklist for Recipients,(https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf); U.S. EPA, Disability Nondiscrimination Plan Sample (https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf). (2017).

[4] At this time, ECRCO is not able to make preliminary findings related to whether MoDNR has in place a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, based on the limited information provided by MoDNR, except as to the failure to provide language access to individuals with LEP. A fuller examination of public participation is required and, thus, it remains under investigation.

[5] The Complaint alleges that Dutchtown disproportionately suffers health risks from these and other regulated sources of pollution located within its community. The Complaint further states that the City of St. Louis' port system is the second-largest inland port system in the United States and that this industrialized riverfront corridor is located adjacent to Dutchtown and is only separated from the community's residential area by Interstate Highway 55. The Complaint further alleges that this highway system increases the exposure to lead due to the proximity to vehicle pollution and subjects Dutchtown "to frequent illegal trash and hazardous waste dumping in their neighborhoods, and the increased incidence of building demolition, leading to the further spread of harmful dust, lead and asbestos into the air."

[6] Case Resolution Manual, Section 3.3: "Alternative Dispute Resolution." ECRCO considers the ADR process to be a viable option for recipients and complainants to address some, if not all, of the discrimination issues in a complaint. ECRCO has discretion to determine, on a case by case basis, whether to offer ADR as a possible resolution path.

[7] ECRCO originally scheduled a meeting with the recipient on October 19, 2020. Due to conflicts, the meeting was rescheduled to November 2, 2021.

[8] Procedural Safeguards Checklist for Recipients, Federal Non-Discrimination Obligations and Best Practices (Revised January 2020). (https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf) .

November 24, 2020, ECRCO met again with MoDNR to discuss further the investigation and MoDNR's participation in an informal resolution process. MoDNR stated that it was not interested in pursuing informal resolution at that time. Accordingly, ECRCO informed MoDNR that it would proceed with its investigation and issue Preliminary Findings.

Legal Standards

EPA's investigation was conducted under the authority of the federal civil rights laws, including Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation (40 C.F.R. Parts 5 and 7) and consistent with EPA's Case Resolution Manual.[9]

I. Background on Dutchtown Community

The Dutchtown Community is located within zip codes 63111, 63116 and 63118, and within the 9th, 11th, 13th, 20th and 25th wards of the City of St. Louis. The Dutchtown Community is an agglomerate of four (4) neighborhoods located on the southside of the City of St. Louis that include Dutchtown, Gravois Park, Mount Pleasant, and Marine Villa. The Dutchtown Community area includes a mixture of residential, retail, commercial and industrial land uses bound by "Cherokee Street or Chippewa Street to the north, Bates Street to the south, the Mississippi River to the east, and the Missouri Pacific railroad tracks to the west."[10]
As part of its investigation, ECRCO reviewed demographic information for the Dutchtown Community. The Dutchtown Community in zip codes 63111, 63116 and 63118 has a total population of approximately 93,865. In zip code 63111, the population is approximately: 46% Black; 9% Hispanic; and 1% Asian. In zip code 63116, the population is approximately: 20% Black; 8% Hispanic; and 7% Asian. In zip code 63118, the population is approximately: 51% Black; 7% Hispanic; and 2% Asian. With respect to persons with limited English proficiency, the Dutchtown Community in zip codes 63111, 63116 and 63118, has a total for all three zip codes of 4%, 11%, and 5%, persons 5 years or older who speak English less than very well, respectively.[11]

Currently there are seven (7) Part 70 major source air permits, five (5) intermediate synthetic minor source air permits, and 18 permitted construction air emission sources located within the Dutchtown Community.[12]

II. Preliminary Findings for Issue Number Two

Whether MoDNR has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the MoDNR's services, programs, and activities, for individuals with limited English proficiency (LEP) and

[9] Case Resolution Manual (Jan. 2021) (https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).
[10] About Dutchtown (https://www.dutchtownstl.org/).
[11] U.S. Census Bureau, American Community Survey data (2014-2018 estimates).
[12] Permit Compliance System (PCS) and Integrated Compliance Information System (ICIS) databases in Envirofacts regarding facilities registered with the federal enforcement and compliance (FE&C). *See* https://www.epa.gov/enviro/pcs-icis-search

individuals with disabilities, and whether the MoDNR has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

ECRCO assessed MoDNR's nondiscrimination program relative to the requirements of federal nondiscrimination laws and regulation. Specifically, ECRCO investigated whether MoDNR is in compliance with the requirements of EPA's nondiscrimination regulation, which sets forth the foundational elements of a recipient's nondiscrimination program. [13] ECRCO has determined that MoDNR failed to comply with its obligations under the federal nondiscrimination laws and EPA's nondiscrimination regulation to have and implement a nondiscrimination program. Further, based on ECRCO's review of the record, it appears that MoDNR ignored concerns raised over the years about its failure to have in place a nondiscrimination program consistent with its longstanding legal obligations.[14]

Notice of Nondiscrimination

EPA's nondiscrimination regulation requires MoDNR have a notice of non-discrimination (Notice) stating that the recipient does not discriminate on the basis of race, color, national origin, age, or disability in a program or activity receiving EPA assistance or, in programs covered by Section 13 of the Education Amendments, on the basis of sex.[15] The Notice must be posted in a prominent place including in the recipient's offices or facilities, on the recipient's website homepage, and in general publications distributed to the public. The Notice must also be accessible to individuals with limited English Proficiency (LEP) and individuals with disabilities.[16] The Notice must also clearly identify the nondiscrimination coordinator, including name and contact information.

Preliminary Findings

ECRCO has determined that at the time of ECRCO's acceptance of the Complaint for investigation, MoDNR did not have a notice of nondiscrimination consistent with EPA's nondiscrimination regulation. ECRCO found that, at the time the Complaint was accepted for investigation, a search of MoDNR's website produced a notice of *employment* nondiscrimination that did not include the necessary information as required by EPA's nondiscrimination regulation, that is, to provide notice of nondiscrimination as to beneficiaries of its programs and activities. Based on ECRCO's review of MoDNR's February 5, 2021, responses to ECRCO's Request for Information #1 (RFI #1), and a search of MoDNR's website, ECRCO has determined that, at some point during the investigation, MoDNR modified its existing notice of

[13] 40 C.F.R. Parts 5 and 7.

[14] *See*, for example, Comments submitted by Mr. Menees on various occasions and with respects to several permits, including, Mallinckrodt, LLC Part 70 Operating Permit, Installation ID: 510-0017 Project No. 1997-05-009, RPC-6; MSD - Bissell Point Wastewater Treatment Plant Installation ID: 510-0053
Part 70 Operating Permit Project No. 2007-06-088, April 16, 2018; and Kinder Morgan Transmix Company, LLC, Installation ID: 510-2939, Intermediate State Operating Permit, Project No. 2015-04-028, RPC-1. [A copy of the original comments was not provided. The comments for Mallinckrodt and Bissell WWTP address North St. Louis (communities of Hyde Park, College Hill, and Old North.)]

[15] 40 C.F.R. § 7.95(a); 40 C.F.R § 5.140.

[16] 40 C.F.R. § 7.95(a); 40 C.F.R § 5.140.

employment discrimination and now its "Nondiscrimination Notice" also includes a reference to "the public" and the federal civil rights laws addressed in EPA's nondiscrimination regulation. However, based on ECRCO's March 2021, evaluation of MoDNR's website, ECRCO has determined the following deficiencies remain:

- MDNR's Nondiscrimination Notice does not include a statement addressing retaliation discrimination, that is, that MoDNR does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in or oppose actions protected/prohibited by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.
- MoDNR's Nondiscrimination Notice does not identify its designated Nondiscrimination Coordinator with enough specificity, including the name, to enable a member of the public to contact that Coordinator.
- MoDNR does not ensure that its Nondiscrimination Notice is accessible to individuals with limited-English proficiency.

Therefore, ECRCO has determined that MoDNR is not in compliance with EPA's nondiscrimination regulation with respect to Notice of Nondiscrimination.[17]

Nondiscrimination Coordinator

EPA's nondiscrimination regulation requires that EPA recipients with fifteen or more employees must designate a nondiscrimination coordinator to oversee their nondiscrimination program.[18] In addition, under the "Notice of Nondiscrimination," the regulation requires that the Notice "identify the responsible employee" designated as the recipient's Nondiscrimination Coordinator.[19]

Preliminary Findings

ECRCO has determined that at the time of the Complaint's acceptance, MoDNR had not designated or identified a nondiscrimination coordinator as required by EPA's nondiscrimination regulation.[20] Based on ECRCO's review of MoDNR's February 5, 2021, responses to ECRCO's RFI #1, and of MoDNR's website, ECRCO has determined that, when MoDNR subsequently modified its existing notice of employment discrimination to include a reference to "the public" and amended its Complaint Procedures to include that "[a]ny person who believes they have been subjected to unequal treatment or discrimination . . ."[21] as well as it External Complaint of Discrimination Form,[22] it continues to direct the public to contact MoDNR's

[17] 40 C.F.R. § 7.95(a); 40 C.F.R § 5.140.
[18] 40 C.F.R. § 7.85(g) (if a recipient employs 15 or more employees, it shall designate at least one person to coordinate its efforts to comply with its obligations under this part); 40 C.F.R § 5.135(a) requiring the designation of a responsible employee with respect to Title IX of the Education Amendments of 1972, as amended.
[19] *See* 40 C.F.R. § 7.95; 40 C.F.R § 5.135(a) requiring the designation of a responsible employee with respect to Title IX of the Education Amendments of 1972, as amended.
[20] MoDNR has over 1300 employees, and as such, this requirement applies to MoDNR (https://dnr.mo.gov/hr/dnrjobinfo.htm).
[21] *See* MoDNR's Complaint Procedures at https://dnr.mo.gov/non-discrimination-notice.htm
[22] *See* MoDNR's External Complaint of Discrimination Form at: https://dnr.mo.gov/forms/780-2926-f.pdf

"Office of Employee Relations." In addition, none of MoDNR's required statements or procedures identify its designated Nondiscrimination Coordinator with enough specificity, including the name, to enable a member of the public to contact that Coordinator. Therefore, ECRCO has determined that MoDNR is not in compliance with EPA's nondiscrimination regulation with respect to designation of a nondiscrimination coordinator.[23]

Grievance Procedures

EPA's nondiscrimination regulation requires that each recipient with fifteen or more employees adopt and publish grievance procedures that ensure the prompt and fair resolution of complaints.[24] Additionally, the U.S. Department of Justice's regulation on "Coordination of Enforcement of Non-discrimination in Federally Assisted Programs," requires recipients to display prominently information regarding the nondiscrimination requirements of Title VI, including the procedures for filing complaints.[25]

Preliminary Findings

At the time of ECRCO's acceptance of this Complaint for investigation, MoDNR had not adopted and published grievance procedures that assure the prompt and fair resolution of complaints as required by EPA's nondiscrimination regulation.[26] In its February 5, 2021, response to ECRCO's RFI #1, MoDNR submitted a copy of its "External Complaint Response Policy," effective date, January 4, 2021.[27] ECRCO reviewed this policy and determined that it does not assure the prompt and fair resolution of complaints. Specifically:

- MoDNR's External Complaint Response Policy does not describe elements of the recipient's investigation process or provide timelines for: the submission of a discrimination complaint; the investigation's review, conclusion, or resolution process; or making an appeal of any final decision(s).
- Neither MoDNR's External Complaint Response Policy nor its External Complaint of Discrimination Form include retaliation as one of the bases for filing a complaint under

[23] *See* 40 C.F.R. § 7.85(g), § 7.95; 40 C.F.R § 5.135(a).
[24] 40 C.F.R. § 7.90 (each recipient with 15 or more employees shall adopt grievance procedures that assure the prompt and fair resolution of complaints). *See also* 40 C.F.R. §5.135(b) ("Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.).
[25] 28 C.F.R. §42.405(c) ("Federal agencies shall require recipients, where feasible, to display prominently in reasonable numbers and places posters which state that the recipients operate programs subject to the nondiscrimination requirements of title VI, summarize those requirements, note the availability of title VI information form recipients and the federal agencies, and explain briefly the procedures for filing complaints. Federal agencies and recipients shall also include information on title VI requirements, complaint procedures and the rights of beneficiaries in handbooks, manuals, pamphlets and other material which are ordinarily distributed to the public to describe the federally assisted programs and the requirements for participation by recipients and beneficiaries. To the extent that recipients are required by law or regulation to publish or broadcast program information in the news media, federal agencies and recipients shall insure that such publications and broadcasts state that the program in question is an equal opportunity program or otherwise indicate that discrimination in the program is prohibited by federal law.").
[26] MoDNR has over 1300 employees, and as such, this requirement applies to MoDNR, (https://dnr.mo.gov/hr/dnrjobinfo.htm).
[27] *See* at https://dnr.mo.gov/policies/1.11.pdf

these procedures.

- Neither MoDNR's External Complaint Response Policy nor its External Complaint of Discrimination Form are accessible to persons with limited English proficiency, in the appropriate languages other than English used by limited English proficient individuals in MoDNR's service area.

Therefore, ECRCO has determined that MoDNR is not in compliance with EPA's nondiscrimination regulation with respect to the adoption and publication of grievance procedures.

Meaningful Access for Persons with Limited English Proficiency (LEP)

Title VI and EPA's nondiscrimination regulation prohibit discrimination on the basis of national origin. The Supreme Court has interpreted this prohibition to include discrimination on the basis of English proficiency, that is, a person's inability to speak, read, write, or understand English.[28] As a recipient of EPA financial assistance MoDNR is required to provide meaningful access to its services, programs and activities for persons with limited English proficiency. [29] To ensure MoDNR is providing meaningful access, MoDNR should conduct appropriate analyses to determine what languages other than English are used by persons with LEP in MoDNR's service area and to determine what language services or mix of language services it needs to provide to ensure that persons with LEP can meaningfully access and participate in its programs, activities and services. This includes, for example, development of a language access plan; translation of vital documents into prominent languages; and provision of simultaneous interpretation of public proceedings and meetings in prominent languages for persons with LEP so they may effectively participate.[30]

It is important to note that as part of requesting and receiving EPA financial assistance, MoDNR agreed by signing Form 4700-4 to comply with their federal non-discrimination obligations, including affirming that MoDNR had "a policy/procedure for providing access to services for persons with limited English proficiency… (40 C.F.R. Part 7, E.O. 13166)." MoDNR also agreed based on Paragraph 39 of EPA's general terms and conditions[31], to more specific obligations, including that: "As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients

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[28] *See* Title VI, 42 U.S.C. 2000(d) *et seq*.; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § 7.35(a).

[29] *See also* U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf).

[30] *See* Title VI , 42 U.S.C. 2000(d) *et seq*.; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § 7.35(a). *See also* U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf).

[31] https://www.epa.gov/sites/production/files/2020-11/documents/fy_2021_epa_general_terms_and_conditions_effective_november_12_2020.pdf

Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at: https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-toenvironmental-protection-agency-financial-assistance-recipients-regarding-title-vi ii."

Preliminary Findings

Based on a review of all available information, including a review of MoDNR's website, and of the information provided to ECRCO by MoDNR, (MoDNR's November 12, 2020, response to ECRCO's Complaint acceptance and MoDNR's February 5, 2021, responses to ECRCO's RFI #1), MoDNR does not have in place specific policies and procedures to ensure meaningful access to its services, programs, and activities, for individuals with limited English proficiency as required by Title VI.[32]

In fact, this conclusion is affirmed by MoDNR in its February 5, 2021 responses to ECRCO's RFI #1, where it states: "The Department reviews and updates its policies and practices, as needed, including those related to nondiscrimination"[33] but also that "The Department's website is over 20 years old. Our current redesign project will make our website more compatible for individuals with limited English proficiency (LEP) and individuals with disabilities and impairments."[34] MoDNR further stated, "Upon request, . . . services are provided by International Language Center and Languages Translation Services."[35] MoDNR finally states that "documents can be translated upon request."[36] However, ECRCO found no such services offered on MoDNR's website, either in English or in any other language. As such, members of the public are not informed that they may request language services free of charge and how they may access those services. These practices are not consistent with Title VI and MoDNR's commitment to use EPA's LEP Guidance as a guide to provide meaningful language access.[37] Further, in response to ECRCO's January 6, 2021, Request for Information #1, and in particular, questions 9 and 10 under the Procedural Safeguards section, MoDNR failed to provide copies of any policies or procedures to ensure meaningful access to persons with LEP or even a

[32] *Id*.
[33] February 5, 2020 correspondence from the Missouri Department of Natural Resources' (Department) in response to the U.S. Environmental Protection Agency, External Civil Rights Compliance Office's January 6, 2021 RFI #1, Response to Question 2.g.
[34] February 5, 2020 correspondence from the Missouri Department of Natural Resources' (Department) in response to the U.S. Environmental Protection Agency, External Civil Rights Compliance Office's January 6, 2021 RFI #1, Response to Question 3.
[35] February 5, 2020 correspondence from the Missouri Department of Natural Resources' (Department) in response to the U.S. Environmental Protection Agency, External Civil Rights Compliance Office's January 6, 2021 RFI #1, Response to Question 8.c.
[36] February 5, 2020 correspondence from the Missouri Department of Natural Resources' (Department) in response to the U.S. Environmental Protection Agency, External Civil Rights Compliance Office's January 6, 2021 RFI #1, Response to Question 10.b.
[37] *See* Title VI , 42 U.S.C. 2000(d) *et seq*.; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § 7.35(a). *See also* U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf).

description of any decision-making process utilized for providing such language services.[38] MoDNR failed to provide a single example of a translated document or instance when a language interpreter was provided for any community within its state service area including during its review of this permit. Furthermore, MoDNR did not provide any evidence that it offered or provided meaningful access to individuals with LEP during its public solicitation for comments related to the Intermediate Operating Permit OP2020-008 to Kinder Morgan Transmix Company, LLC. Accordingly, MoDNR is not in compliance with its obligation under Title VI and the general terms and conditions of EPA financial assistance to ensure meaningful access to its services, programs or activities for persons with limited English proficiency.

Individuals with Disabilities

EPA's nondiscrimination regulation provides that no individual with a disability "shall solely on the basis of [disability] be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving EPA assistance."[39] Recipients also must make sure that interested persons, including those with impaired vision or hearing, can find out about the existence and location of the assisted program services, activities, and facilities that are accessible to and usable by persons with disabilities and that recipients must give priority to methods of providing accessibility that offer program benefits to persons with disabilities in the most integrated setting appropriate. [40] To ensure nondiscrimination for persons with disabilities, MDNR should develop, publicize and implement written procedures to ensure meaningful access to its programs, services and activities for individuals with disabilities that clearly and consistently provide a recipient's "plan" for how it will provide, at no cost, appropriate auxiliary aids and services, including but not limited to, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication and an equal opportunity to participate fully in the benefits, activities, programs and services provided by the recipient, in a timely manner and in such a way as to protect the privacy and independence of the individual. To assist recipients with its nondiscrimination requirements, EPA has published a sample disability nondiscrimination plan, which provides technical assistance guidance with respect to the nondiscrimination coordinator's role, grievance procedures, facility accessibility, and accommodations.[41] ECRCO has responsibility for enforcing Section 504 of the Rehabilitation Act of 1973, but does not have responsibility for enforcing compliance with the Americans with Disabilities Act (ADA). However, the Sample Plan addresses both statutes, in recognition that most recipients have obligations under both laws.

Preliminary Findings

MoDNR has a Notice and Grievance Procedures specifically addressing the Americans with Disabilities Act posted on its website. Although the documents generally address the necessary

[38] According to the U.S. Census Bureau's American Community Survey, 2018, there are over 124,000 persons with LEP in the state of Missouri, including over 52,000 persons with LEP whose prominent language is Spanish. See at: https://data.census.gov/cedsci/table?g=0400000US29&y=2018&d=ACS%205-Year%20Estimates%20Data%20Profiles&tid=ACSDP5Y2018.DP02.
[39] 40 C.F.R. § 7.45.
[40] 40 C.F.R. § 7.65 (b) and (d).
[41] https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf

components of a "disability plan," meaningful access to individuals with disabilities to MoDNR's programs, services, and activities, the Notice and Grievance Procedures appear to be duplicative of MoDNR's other Grievance Procedures and Complaint Form for filing complaints of discrimination, including disability discrimination. Neither set of documents provides clear and consistent instructions or direction for persons with disabilities about which process to follow in order to either file a grievance for discrimination on the basis of disability or seek reasonable accommodations in order to participate in MoDNR's programs, services and activities. Further, the MoDNR's ADA grievance procedures identifies timelines for requesting accommodations to access services, programs and activities that are different from those timelines referenced in the ADA Notice.[42] Under these circumstances, ECRCO has determined that MoDNR is not in compliance with this requirement of EPA's nondiscrimination regulation.

Public Participation

As to whether MoDNR has public participation policies and processes that are consistent with Title VI and the other federal civil rights laws, EPA's implementing regulation at 40 C.F.R. Parts 5 and 7, and EPA's guidance on this issue,[43] based on the limited information provided thus far by MoDNR, a fuller examination of this sub-issue is required. Thus, this remains under investigation. However, the public participation process carried out by MoDNR relative to the Intermediate Operating Permit OP2020-008 to Kinder Morgan Transmix Company, LLC., was not implemented consistent with Title VI, as meaningful access to those proceedings was not provided to persons with limited-English proficiency.

III. Summary of Preliminary Findings

As discussed above, ECRCO has concluded its investigation of the second issue.[44] The first issue remains under investigation. With respect to the second issue, ECRCO has determined that the preponderance of the evidence supports a conclusion that MoDNR failed to comply with federal nondiscrimination laws and EPA's nondiscrimination regulation with respect to MoDNR not having in place nor implementing a nondiscrimination program, including: procedural safeguards required under 40 C.F.R. Parts 5 and 7; policies and procedures for ensuring meaningful access to MoDNR's services, programs, and activities for individuals with LEP and

[42] MoDNR's Notice Under the Americans with Disabilities Act states, "Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of the Missouri Department of Natural Resources, should contact the office of either Misty Hill or Mike Sutherland as soon as possible but no later than 48 hours before the scheduled event." *See* https://dnr.mo.gov/docs/notice-under-the-americans-with-disabilities-act.pdf. MoDNR's website states, "Individuals who require special services or accommodations to participate in the Department program, service, or activity should make arrangements by contacting the Department as soon as possible, but no later than 72 hours before the scheduled event if reasonable." *See* https://dnr.mo.gov/non-discrimination-notice.htm.

[43] *See* U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR 14207 (March 21, 2006) (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf).

[44] At this time, ECRCO is not able to make preliminary findings related to whether MoDNR has in place a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, based on the limited information provided by MoDNR, except as to the failure to provide language access to individuals with LEP. A fuller examination of this sub-issue is required and, thus, it remains under investigation.

individuals with disabilities; and a public participation program that ensures meaningful access to those proceedings to persons with limited-English proficiency.[45] Further, based on ECRCO's review of available evidence, it appears that MoDNR ignored concerns raised over the years about its failure to have in place a nondiscrimination program consistent with its longstanding legal obligations.[46]

IV. Steps for Resolving Preliminary Findings of Noncompliance and Achieving Compliance

After ECRCO makes a partial preliminary finding of noncompliance, the administrative process for resolving the finding is set forth in 40 C.F.R. Part 7.115(d). The regulation provides that "(a)fter receiving the notice of the preliminary finding of noncompliance in paragraph (c) of this section, the recipient may: (1) Agree to the OCR's recommendations, or (2) Submit a written response sufficient to demonstrate that the preliminary findings are incorrect, or that compliance may be achieved through steps other than those recommended by OCR." If MoDNR does not take one of these actions within fifty (50) calendar days after receiving this preliminary notice, ECRCO will, within fourteen (14) calendar days, send a formal written determination of noncompliance to the recipient and copies to the Award Official and Assistant Attorney General.

ECRCO proposes to resolve these preliminary findings through a Voluntary Compliance Agreement[47] to address the deficiencies discussed in this letter. Following this letter, ECRCO will contact MoDNR to discuss a Voluntary Compliance Agreement. In addition, ECRCO offers MoDNR the opportunity to enter into an Informal Resolution Agreement that would allow ECRCO and MoDNR to address collaboratively the remaining issue accepted for investigation, without findings of compliance or noncompliance.[48]

V. Recommendations for Achieving Voluntary Compliance

Pursuant to 40 C.F.R. § 7.115(c)(1)(ii), ECRCO makes the following recommendations to address the compliance deficiencies identified in this letter:

A. Notice of Non-Discrimination under the Federal Non-Discrimination Laws

1. The MoDNR will post a notice of non-Discrimination (Notice) on the MoDNR's website homepage, in all MoDNR's offices and facilities, and in its general publications that are distributed to the public (*e.g.,* public outreach materials, such as brochures, notices, fact sheets or other information on rights and services; applications or forms to participate in or access MoDNR programs, processes or activities). The MoDNR will ensure that its Notice is accessible to individuals with limited-English proficiency (LEP) in the

[45] At this time, ECRCO is not able to make preliminary findings related to whether MoDNR has in place a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, based on the limited information provided by MoDNR, except as to the failure to provide language access to individuals with LEP. A fuller examination of public participation is required and, thus, it remains under investigation.
[46] *See* EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.
[47] Case Resolution Manual (Jan. 2021) at Section 5.1 (https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf
[48] Case Resolution Manual (Jan. 2021) at Section 3.1 (https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf

appropriate language(s)[49] and individuals with disabilities, including ensuring that the Notice posted on the MoDNR's Website Homepage is accessible to persons who are blind or have low vision, and for individuals with color vision impairment or color blindness.

The Notice will contain, at a minimum, the following recommended text:

a. The MoDNR does not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of its programs or activities, and the MoDNR does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in or oppose actions protected/prohibited by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.
b. [Insert name and title of non-discrimination coordinator] is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7 (Non-Discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title IX of the Education Amendments of 1972; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination laws).

c. If you have any questions about this notice or any of the MoDNR's non-discrimination programs, policies or procedures, you may contact:
(Name)
(Position)
(Organization/Department)
Missouri Department of Natural Resources
PO Box 176; 1101 Riverside Drive
Jefferson City, MO 65102-0176 (Phone Number)
(Email)

If you believe that you have been discriminated against with respect to a [Recipient Name] program or activity, you may contact the [insert title of non-discrimination coordinator] identified above or visit our website at [insert Recipient website address] to learn how and where to file a complaint of discrimination.

[49] U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf) (Providing guidance in Section V(1): "the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population."

2. If the identity of the Non-Discrimination Coordinator changes, then the MoDNR will promptly update materials as appropriate.

B. Grievance Procedures to Process Discrimination Complaints filed under the Federal Non-Discrimination Laws

1. The MoDNR will post Grievance Procedures to promptly and fairly process and resolve discrimination complaints filed under federal non-discrimination statutes and the EPA's implementing regulations at 40 C.F.R. Parts 5 and 7 on the MoDNR's website homepage, in all MoDNR's offices and facilities, and in its general publications as appropriate that are distributed to the public. The MoDNR will ensure that its Grievance Procedures are accessible to individuals with LEP in the appropriate language(s) and individuals with disabilities, including ensuring that the Notice as posted on its Website Homepage is accessible to individuals who are blind or have low vision, and for individuals with color vision impairment or color blindness.

2. The Grievance Procedures will:
    a. Clearly identify the Non-Discrimination Coordinator, including name and contact information;
    b. Explain the role of the Non-Discrimination Coordinator relative to the coordination and oversight of the Grievance Procedures;
    c. State who may file a complaint under the Grievance Procedures and describe the appropriate bases for filing a complaint;
    d. Describe which processes are available, and the options for complainants in pursuing either;
    e. Describe elements of the recipient's investigation process and provide timelines for: the submission of a discrimination complaint; the investigation's review, conclusion, or resolution process; or making an appeal of any final decision;
    f. State that the preponderance of the evidence standard will be applied during the analysis of the complaint;
    g. Contain assurances that intimidation and retaliation are prohibited and that claims of intimidation and retaliation will be handled promptly and fairly pursuant to your Grievance Procedures in the same manner as other claims of discrimination;
    h. Assure the prompt and fair resolution of complaints which allege violation of federal non-discrimination laws;
    i. State that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process.
    j. Be reviewed on an annual basis (for both in-print and online materials), and revised as necessary, to ensure prompt and fair resolution of discrimination complaints.

3. The MoDNR will review and revise as necessary the Grievance Procedures on an annual basis to ensure prompt and fair resolution of discrimination complaints.

C. Designation of Non-Discrimination Coordinator

1. The MoDNR will designate at least one Non-Discrimination Coordinator to ensure compliance with the federal non-discrimination laws, who will:

    a. Provide information to individuals internally and externally that the MoDNR does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of the MoDNR's programs or activities, and that the MoDNR does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in or oppose actions protected/prohibited by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights;
    b. Provide notice of the MoDNR's grievance processes and the ability to file a discrimination complaint;
    c. Establish a mechanism (e.g., an investigation manual) for implementation of the MoDNR's Grievance Procedures to ensure that all discrimination complaints filed with the MoDNR under federal non-discrimination laws and the EPA implementing regulations 40 C.F.R. Parts 5 and 7 are processed promptly and fairly. One element of any policy and procedure or mechanism must include providing meaningful access for individuals with limited English proficiency and individuals with disabilities to the MoDNR's services, programs and activities;
    d. Track all complaints filed with the MoDNR under federal non-discrimination laws, in order to identify any patterns or systemic problems;
    e. Conduct semiannual reviews/analysis of all complaints filed with the MoDNR under the federal non-discrimination laws identified within this Agreement, and/or any other discrimination complaints independently investigated by the MoDNR covering these laws, to identify and address any patterns, systematic problems or any trends identified;
    f. Ensure that appropriate training is provided for MoDNR staff in the processes available to resolve complaints filed with the MoDNR under federal non-discrimination laws;
    g. Ensure that appropriate training is provided for MoDNR staff on the MoDNR's non-discrimination policies and procedures, as well as the nature of the MoDNR's obligation to comply with federal non-discrimination laws;
    h. Ensure that complainants are updated on the progress of their complaints filed with the MoDNR under federal non-discrimination laws and are promptly informed as to any determinations the MoDNR has made;
    i. Undertake periodic evaluations of the efficacy of the MoDNR's efforts to provide services, aids, benefits, and participation in any of the MoDNR's programs or activities without regard to race, color, national origin, disability, age, sex or prior exercise of rights or

opposition to actions protected under federal non-discrimination laws.

2. The Non-Discrimination Coordinator will not have other responsibilities that create a conflict of interest (*e.g.,* serving as the MoDNR's Non-Discrimination Coordinator as well as its legal advisor or representative on civil rights issues).

3. The MoDNR will identify, by name and position, at least one individual who will serve as Non-Discrimination Coordinator(s) consistent with the regulatory requirements of 40 C.F.R. §5.135, §7.85(g), and §7.95(a).

D. MoDNR Plan to Ensure Meaningful Access to Programs and Activities for Persons with Limited English Proficiency (LEP)
   1. The MoDNR will conduct an appropriate analysis as described in EPA's LEP Guidance found at 69 F.R. 35602 (June 25, 2004)[50], to identify the appropriate language groups and determine what language services or mix of language services the MoDNR needs to provide (e.g., interpreters and translators), to ensure that limited-English proficient individuals can meaningfully participate in the MoDNR's services, programs and activities.

   2. The MoDNR will develop, publicize, and implement written procedures (a Language Access Plan) to ensure meaningful access to all MoDNR services, programs and activities for individuals with LEP, at no cost to those individuals.

E. MoDNR Plan to Ensure Meaningful Access to Programs and Activities for Persons with Disabilities
   1. The MoDNR will develop, publicize and implement a Disability Access Plan to ensure meaningful access to all MoDNR programs, services and activities for individuals with disabilities.[51]

   2. The MoDNR will provide, at no cost, auxiliary aids and services to individuals with disabilities, (including, but not limited to, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals, as necessary), to ensure effective communication and an equal opportunity to participate fully in benefits, activities, programs, and services provided by the MoDNR in a timely manner in such a way as to protect the privacy and independence of the individual.

   3. The MoDNR will ensure that its facilities and other facilities utilized by the MoDNR (*e.g.* if the MoDNR holds a public hearing at a school or recreational center) are physically accessible to, individuals with disabilities.

[50] https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf
[51] *See* Disability Nondiscrimination Plan Sample, at https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf

F. Training

1. The MoDNR will ensure that all its employees and contractors have been appropriately trained on federal non-discrimination obligations and all plans, policies and procedures created and implemented as part of this letter. MoDNR may request assistance from EPA for any of the training required in this letter.
2. The MoDNR will forward to EPA for review a draft plan for ensuring that such training is a routine part of the on-boarding process for new employees and contractors and is given regularly as refresher training to all employees and contractors.

This letter sets forth ECRCO's partial preliminary findings in EPA Complaint No. 01RNO-20-R7. This letter is not a formal statement of ECRCO policy and should not be relied upon, cited, or construed as such. This letter and any findings herein do not affect MoDNR's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 CFR Parts 5 and 7, nor do they affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not addressed in this letter.

If you have questions about this letter please feel free to contact me at (202)564-9649, by email at dorka.lilian@epa.gov, or Jeryl Covington, Case Manager, at (202)564-7713, by email at covington.jeryl@epa.gov; or Mahri Monson, Case Manager, at (202)564-2468, by email at monson.mahri@epa.gov.

Sincerely,

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Jacob Westen
Acting General Counsel
Missouri Department of Natural Resources

Angelia Talbert-Duarte
Associate General Counsel
Civil Rights & Finance Law Office

Edward H. Chu
Deputy Regional Administrator
Deputy Civil Rights Official
EPA Region 7

Leslie Humphrey
Regional Counsel
EPA Region 7

Michael Osinski
Director, Office of Grants and Debarment
EPA Headquarters

Pamela S. Karlan
Principal Deputy Assistant Attorney General
Department of Justice
Office of the Assistant Attorney General

Appendix F. BAAQMD Title V Permit Application Report, February 3, 2023

Engineering Division: Title V Program
Title V Permit Application Metrics
2/3/23

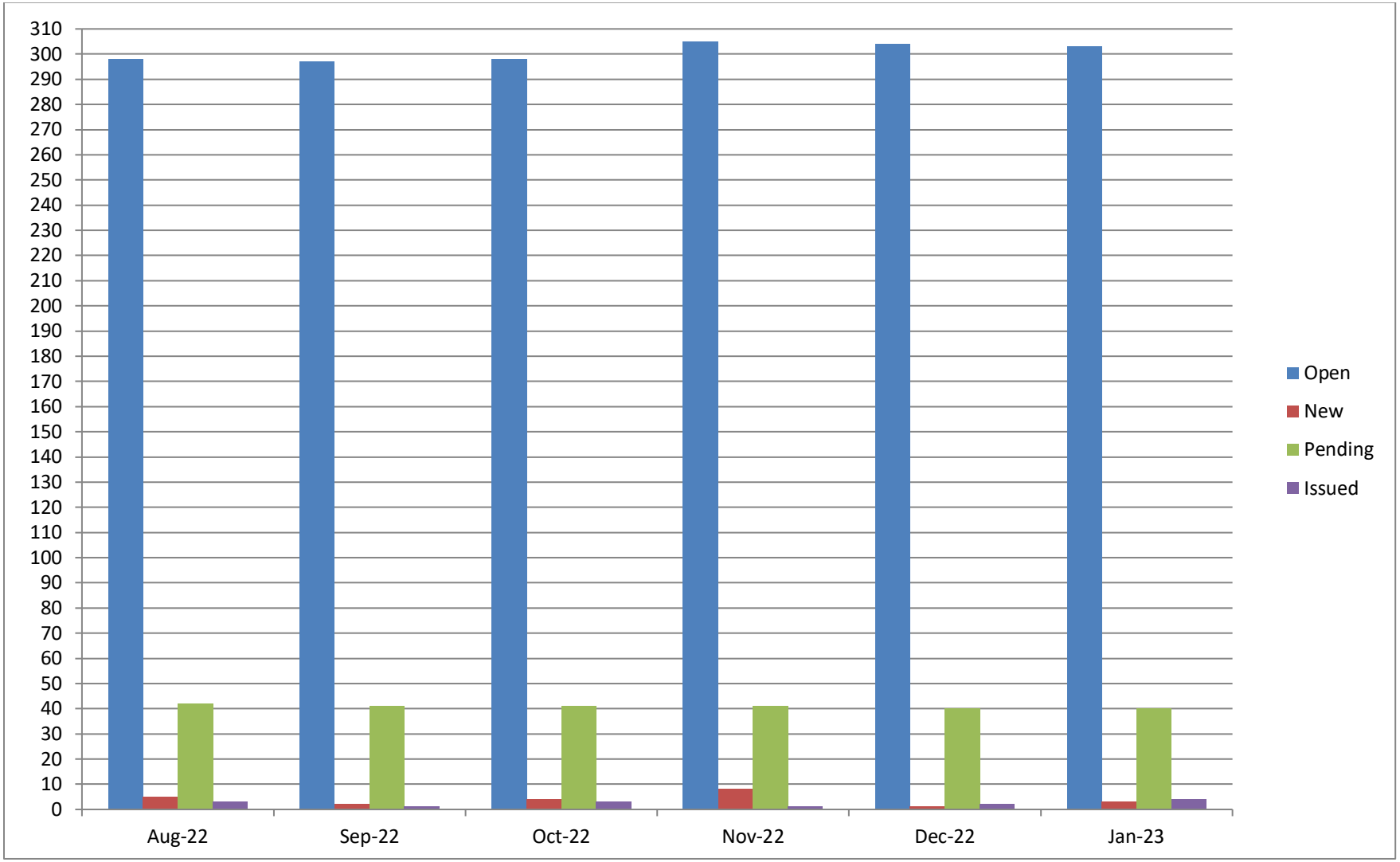
Title V Permit Applications: Open, New, Pending*, or Issued

Application Type	2022																				2023			
	August				September				October				November				December				January			
	Op.	New	Pnd.	Iss.	Op.	New	Pnd.	Iss.	Op.	New	Pnd.	Iss.	Op.	New	Pnd.	Iss.	Op.	New	Pnd.	Iss.	Op.	New	Pnd.	Iss.
Initial	3	0	0	0	3	0	0	0	3	0	0	0	3	0	0	0	3	0	0	0	3	0	0	0
Renewal	53	0	8	1	53	1	8	0	54	1	9	0	56	2	9	0	56	0	8	0	55	0	9	1**
Minor Revision	204	4	24	2	203	1	24	0	205	3	23	1	208	3	23	0	207	0	23	0	207	2	23	2**
Significant Revision	21	0	4	0	21	0	3	0	20	0	3	1	20	0	3	0	21	1	3	0	21	1	3	1**
Administrative Amendment	16	1	5	0	16	1	5	1	16	0	6	0	18	3	6	1	17	0	6	2	17	0	6	0
Reopening	1	0	1	0	1	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Total	298	5	42	3	297	3	41	1	298	4	41	3	305	8	41	1	304	1	40	2	303	3	41	4

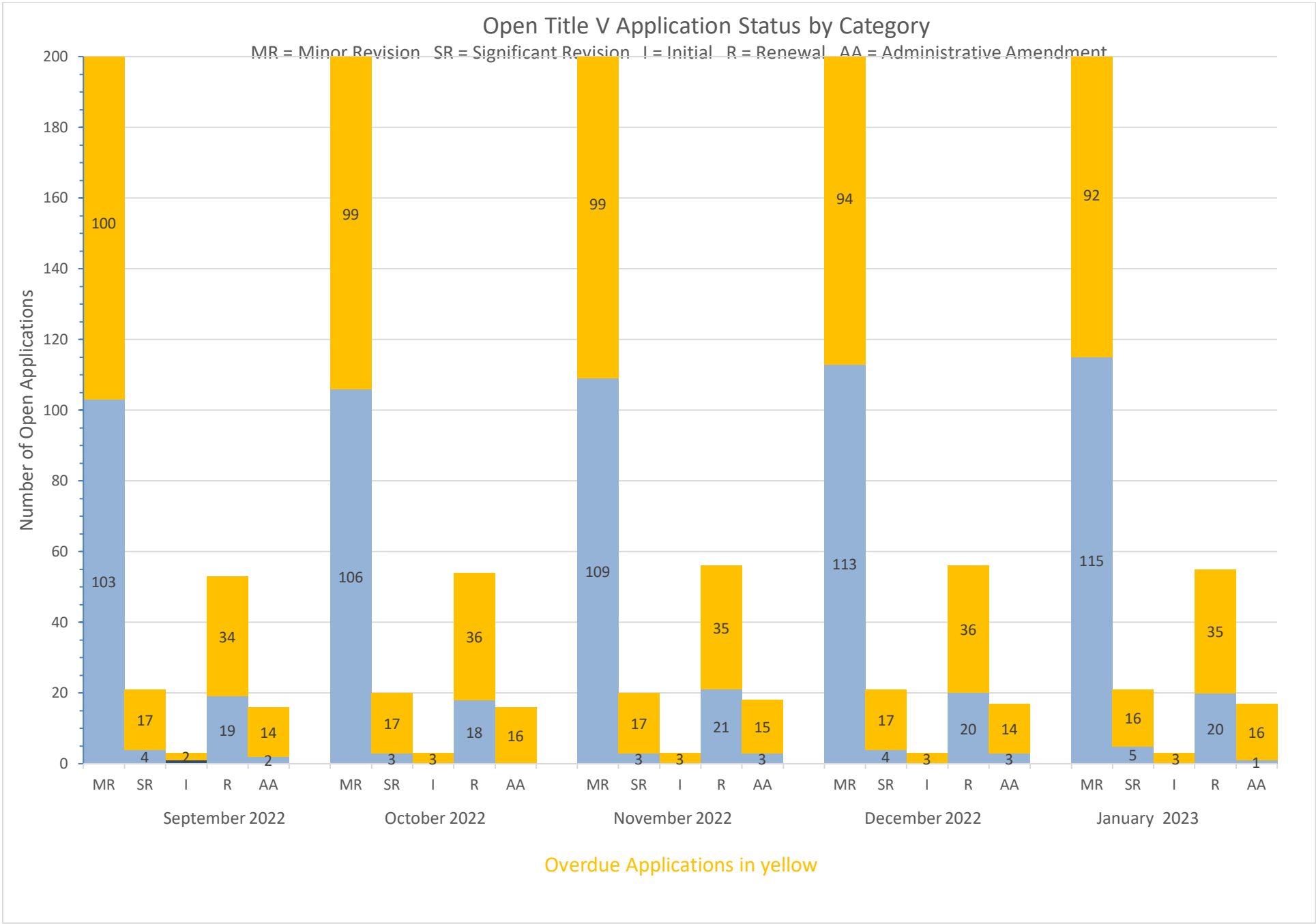
***applications currently proposed for public and/or EPA comment, on internal review, or routing for final issuance**

****Cancellation**

Title V Permit Applications: Open, New, Pending, or Issued
2/3/23



- **Total Number of Open TV Applications: 303**
- **Total Number of Overdue TV Applications: 162**


Open Title V Application Status by Category
MR = Minor Revision SR = Significant Revision I = Initial R = Renewal AA = Administrative Amendment
Number of Open Applications
200
180
160
140
120
100
80
60
40
20
0
MR SR I R AA
September 2022
103 4 2 19 14
100 17 34
October 2022
106 3 3 18 16
99 17 36
November 2022
109 3 3 21 15
99 17 35
December 2022
113 4 3 20 14
94 17 36
January 2023
115 5 3 20 16
92 16 35
Overdue Applications in yellow

Open Title V Application Status by Category

Application Type	September 2022			October 2022			November 2022			December 2022			January 2023		
	Okay	Overdue	Total	Okay	Overdue	Total	Okay	Overdue	Total	Okay	Overdue	Total	Okay	Overdue	Total
Initial (I)	1	2	3	0	3	3	0	3	3	0	3	3	0	3	3
Renewal (R)	19	34	53	18	36	54	21	35	56	20	36	56	20	35	55
Minor Revision (MR)	103	100*	203	106	99*	205	109	99*	208	113	94*	207	115	92*	207
Significant Revision (SR)	4	17	21	3	17	20	3	17	20	4	17	21	5	16	21
Administrative Amendment (AA)	2	14	16	0	16	16	3	15	18	3	14	17	1	16	17
Reopening (RE)	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0
Total:	129	168	297	127	171	298	136	169	305	140	164	304	141	162	303

*excludes applications that are delayed because of NSR permitting, compliance, CEQA, or source testing issues; Includes applications that will be folded into pending renewal applications

Title V Permit Application Issuance Timelines

Application Type	Issuance Deadline
Administrative Amendment	60 days from receipt of application
Minor Revision	**The later of the following**: 90 days of receipt of application or 15 days after end of 45-day EPA review period Chart data based upon overdue trigger of 180 days from receipt unless delayed by NSR permitting, compliance, or source testing issues
Initial, Renewal, and Significant Revision	18 months after an application has been deemed complete
Reopening	Within 12 months of reopening

Appendix G. BAAQMD Enforcement Referral Form

ENFORCEMENT REFERRAL

Enf Referral # _ _ER_ _ _ _

DATE: _____

TO: ENFORCEMENT MANAGER _____ **Compliance & Enforcement Division**

REFERRED BY: _____ **Engineering Division, Ext.** _____

SITE #: _____ **NAME:** _____ **ADDRESS:** _____

---

1. Subject facility has submitted a Permit Application (P/A) # _____ **which indicates the following violation:**

☐ Reg. 2-1-301 and/or ☐ Reg. 2-1-302 Original Installation Date: _____

☐ Cancelled - Date: _____ ☐ Denied - Date: _____

2. Subject plant has submitted other documents or informed staff that there may be a violation of air pollution emission regulations regarding the following:

☐ Reg. _____ ☐ Reg. 2-1-307; Condition # _____
Supporting documentation to be attached

Comment: _____

_____

_____

3. Engineering staff is referring this matter to the Enforcement Division because:

☐ A violation may have occurred, investigate and take appropriate enforcement action.
Supporting documentation to be attached.

Comments: _____

_____

4. Engineer requests that the Inspector call after investigation: ☒ **Yes** ☐ **No**

Compliance & Enforcement Division

Referral assigned to:

Supervisor: _____ D# _____

Inspector: _____ I# _____

Enforcement Division actions:

☐ **No;** Enforcement action was not taken (violation not documented)

☐ **Yes,**

NOV # _____ was issued on _____

NTC # _____ was issued on _____

Comments: _____

_____

☐ **This referral is being sent back to Engineering:**

Comments: _____

(White – Field Inspector Yellow – Enforcement Pink – P/A File)

Appendix H. BAAQMD Fee Information

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

2020 COST RECOVERY STUDY

Prepared by the staff of the
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA

January 2020

Table of Contents

Figures

Executive Summary

The 2020 Cost Recovery Study includes the latest fee-related cost and revenue data gathered for FYE 2019 (i.e., July 1, 2018 - June 30, 2019). The results of this 2020 Cost Recovery Study will be used as a tool in the preparation of the FYE 2021 budget, and for evaluating potential amendments to the Air District's Regulation 3: Fees.

The completed cost recovery analysis indicates that in FYE 2019 there continued to be a revenue shortfall, as overall direct and indirect costs of regulatory programs exceeded fee revenue (see Figure 2). For FYE 2017 to 2019, the Air District is recovering approximately 84 percent of its fee-related activity costs (see Figure 3). The overall magnitude of this cost recovery gap was determined to be approximately $8.4 million. This cost recovery gap was filled using General Fund revenue received by the Air District from the counties' property tax revenue.

The 2020 Cost Recovery Study also addressed fee-equity issues by analyzing whether there is a revenue shortfall at the individual Fee Schedule level. It was noted that of the twenty-three Fee Schedules for which cost recovery could be analyzed, seven of the component Fee Schedules had fee revenue contributions exceeding total cost.

Background

The Air District is responsible for protecting public health and the environment by achieving and maintaining health-based national and state ambient air quality standards, and reducing public exposure to toxic air contaminants, in the nine-county Bay Area region. Fulfilling this task involves reducing air pollutant emissions from sources of regulated air pollutants and maintaining these emission reductions over time. In accordance with State law, the Air District's primary regulatory focus is on stationary sources of air pollution.

The Air District has defined units for organizational purposes (known as "Programs") to encompass activities which are either dedicated to mission-critical "direct" functions, such as permitting, rule-making, compliance assurance, sampling and testing, grant distribution, etc., or are primarily dedicated to support and administrative "indirect" functions. The Air District has also defined revenue source categories (known as "Billing Codes") for the permit fee schedules, grant revenue sources, and general support activities.

The Air District's air quality regulatory activities are primarily funded by revenue from regulatory fees, government grants and subventions, and county property taxes. Between 1955 and 1970, the Air District was funded entirely through property taxes. In 1970, the California Air Resources Board (CARB) and U.S. Environmental Protection Agency began providing grant funding to the Air District. After the passage of Proposition 13, the Air District qualified as a "special district" and became eligible for AB-8 funds, which currently make up the county revenue portion of the budget.

State law authorizes the Air District to impose a schedule of fees to generate revenue to recover the costs of activities related to implementing and enforcing air quality programs.

On a regular basis, the Air District has considered whether these fees result in the collection of a sufficient and appropriate amount of revenue in comparison to the cost of related program activities.

In 1999, a comprehensive review of the Air District's fee structure and revenue was completed by the firm KPMG Peat Marwick LLP (*Bay Area Air Quality Management District Cost Recovery Study, Final Report: Phase One – Evaluation of Fee Revenues and Activity Costs; February 16, 1999*). The Study recommended an activity-based costing model, which has been implemented. Also, as a result of that Study, the Air District implemented a time-keeping system. These changes improved the Air District's ability to track costs by program activities. The 1999 Cost Recovery Study indicated that fee revenue did not offset the full costs of program activities associated with sources subject to fees as authorized by State law. Property tax revenue (and in some years, fund balances) have been used to close this gap.

In 2004, the Air District's Board of Directors approved funding for an updated Cost Recovery Study that was conducted by the accounting/consulting firm Stonefield Josephson, Inc. (*Bay Area Air Quality Management District Cost Recovery Study, Final Report; March 30, 2005*). This Cost Recovery Study analyzed data collected during the three-year period FYE 2002 through FYE 2004. It compared the Air District's costs of program activities to the associated fee revenues and analyzed how these costs are apportioned amongst the fee-payers. The Study indicated that a significant cost recovery gap existed. The results of this 2005 report and subsequent internal cost recovery studies have been used by the Air District in its budgeting process, and to set various fee schedules.

In March 2011, another study was completed by the Matrix Consulting Group (*Cost Recovery and Containment Study, Bay Area Air Quality Management District, Final Report; March 9, 2011*). The purpose of this Cost Recovery and Containment Study was to provide the Air District with guidance and opportunities for improvement regarding its organization, operation, and cost recovery/allocation practices. A Cost Allocation Plan was developed and implemented utilizing FYE 2010 expenditures. This Study indicated that overall, the Air District continued to under-recover the costs associated with its fee-related services. In order to reduce the cost recovery gap, further fee increases were recommended for adoption over a period of time in accordance with a Cost Recovery Policy to be adopted by the Air District's Board of Directors. Also, Matrix Consulting Group reviewed and discussed the design and implementation of the new Production System which the Air District is developing in order to facilitate cost containment through increased efficiency and effectiveness.

Air District staff initiated a process to develop a Cost Recovery Policy in May 2011, and a Stakeholder Advisory Group was convened to provide input in this regard. A Cost Recovery Policy was adopted by the Air District's Board of Directors on March 7, 2012. This policy specifies that the Air District should amend its fee regulation, in conjunction with the adoption of budgets for Fiscal Year Ending (FYE) 2014 through FYE 2018, in a manner sufficient to increase overall recovery of regulatory program activity costs to 85%. The policy also indicates that amendments to specific fee schedules should continue to be made in consideration of cost recovery analyses conducted at the fee

schedule-level, with larger increases being adopted for the schedules that have the larger cost recovery gaps.

In February 2018, the Matrix Consulting Group completed an update of the 2011 cost recovery and containment study for the fiscal year that ended June 30, 2017. The primary purpose of this Study was to evaluate the indirect overhead costs associated with the Air District and the cost recovery associated with the fees charged, by the Air District. The project team evaluated the Air District's FYE 2017 Programs to assess their classification as "direct" or "indirect". In addition, they audited the time tracking data associated with each of the different fee schedules. The Study provided specific recommendations related to direct and indirect cost recovery for the Air District, as well as potential cost efficiencies.

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Legal Authority

In the post-Prop 13 era, the State Legislature determined that the cost of programs to address air pollution should be borne by the individuals and businesses that cause air pollution through regulatory and service fees. The primary authority for recovering the cost of Air District programs and activities related to stationary sources is given in Section 42311 of the Health and Safety Code (HSC), under which the Air District is authorized to:

- Recover the costs of programs related to permitted stationary sources
- Recover the costs of programs related to area-wide and indirect sources of emissions which are regulated, but for which permits are not issued
- Recover the costs of certain hearing board proceedings
- Recover the costs related to programs that regulate toxic air contaminants

The measure of the revenue that may be recovered through stationary source fees is the full cost of all activities related to these sources, including all direct Program costs and a commensurate share of indirect Program costs. Such fees are valid so long as they do not exceed the reasonable cost of the service or regulatory program for which the fee is charged, and are apportioned amongst fee payers such that the costs allocated to each fee-payer bears a fair or reasonable relationship to its burden on, and benefits from, the regulatory system.

Air districts have restrictions in terms of the rate at which permit fees may be increased. Under HSC Section 41512.7, permit fees may not be increased by more than 15 percent on a facility in any calendar year.

Study Methodology

The methodology for determining regulatory program revenue and costs is summarized as follows:

Revenue

Revenue from all permit renewals and applications during the FYE 2019 was assigned to the appropriate Permit Fee Schedules. This is a continued improvement over prior years' process due to the more detailed data available in the New Production System.

Costs

Costs are expenditures that can be characterized as being either direct or indirect. Direct costs can be identified specifically with a particular program activity. Direct costs include wages and benefits, operating expenses, and capital expenditures used in direct support of the particular activities of the Air District (e.g., permit-related activities, grant distribution, etc.).

Indirect costs are those necessary for the general operation of the Air District as a whole. Often referred to as "overhead", these costs include accounting, finance, human resources, facility costs, information technology, executive management, etc. Indirect costs are allocated to other indirect Programs, using the reciprocal (double-step down) method, before being allocated to direct Programs.

Employee work time is tracked by the hour, or fraction thereof, using both Program and Billing Code detail. This time-keeping system allows for the capture of all costs allocatable to a revenue source on a level-of-effort basis.

Employee work time is allocated to activities within Programs by billing codes (BC1-BC99), only two of which indicate general support. One of these two general support codes (BC8) is identified with permitting activities of a general nature, not specifically related to a particular Fee Schedule.

Operating and capital expenses are charged through the year to each Program, as incurred. In cost recovery, these expenses, through the Program's Billing Code profile, are allocated on a pro-rata basis to each Program's revenue-related activity. For example, employees working in grant Programs (i.e., Smoking Vehicle, Mobile Source Incentive Fund, etc.) use specific billing codes (i.e., BC3, BC17, etc.), and all operating/capital expense charges are allocated pro-rata to those grant activities. Employees working in permit-related Programs (i.e., Air Toxics, Compliance Assurance, Source Testing, etc.) also use specific billing codes (i.e., BC8, BC21, BC29, etc.) and all operating/capital expense charges incurred by those Programs are allocated pro-rata to those Program's activity profiles as defined by the associated billing codes.

Direct costs for permit activities include personnel, operating and capital costs based on employee work time allocated to direct permit-related activities, and to general permit-related support and administrative activities (allocated on pro-rata basis). Indirect costs

for permit activities include that portion of general support personnel, operating and capital costs allocated pro-rata to permit fee revenue-related program activities.

Study Results

Figure 1 shows a summary of overall regulatory program costs and revenue for FYE 2019. Figure 2 shows the details of costs and revenue on a fee schedule basis for FYE 2019 by schedule. Figure 3 shows the details of average schedule costs and revenue for the three-year period FYE 2017 through FYE 2019 by schedule.

Discussion of Results

Figure 1 indicates that in FYE 2019 there continued to be a revenue shortfall, as the direct and indirect costs of regulatory programs exceeded fee revenue. The overall magnitude of the cost recovery gap was determined to be $7.9 million for FYE 2019. This cost recovery gap was filled by General Fund revenue received by the Air District from the counties.

Figure 2 shows that in FYE 2019 there were revenue shortfalls for most of the twenty-three fee schedules for which cost recovery can be analyzed. For FYE 2019, the Air District is recovering approximately 86% of its fee-related activity costs. The revenue collected exceeded Program costs for seven fee schedules. These are Schedule B (Combustion of Fuels), Schedule C (Stationary Containers for the Storage of Organic Liquids), Schedule D (Gasoline Transfer at Gasoline Dispensing Facilities, Bulk Plants and Terminals), Schedule G-5 (Miscellaneous Sources), Schedule L (Asbestos Operations), Schedule R (Equipment Registration Fees), and Schedule X (Community Air Monitoring). The revenue collected was less than program costs for 16 fee schedules. These are Schedule A (Hearing Board), Schedule E (Solvent Evaporating Sources), Schedule F (Miscellaneous Sources), Schedule G-1 (Miscellaneous Sources), Schedule G-2 (Miscellaneous Sources), Schedule G-3 (Miscellaneous Sources), Schedule G-4 (Miscellaneous Sources), Schedule H (Semiconductor and Related Operations), Schedule I (Dry Cleaners), Schedule K (Solid Waste Disposal Sites), Schedule N (Toxic Inventory Fees), Schedule P (Major Facility Review Fees), Schedule S (Naturally Occurring Asbestos Operations), Schedule T (Greenhouse Gas Fees), Schedule V (Open Burning), and Schedule W (Refinery Emissions Tracking),.

Figure 3 shows that over a three-year period (FYE 2017 through FYE 2019) there were revenue shortfalls for most of the twenty-three fee schedules for which cost recovery can be analyzed. For this three-year period, the Air District is recovering approximately 84% of its fee-related activity costs. The revenue collected exceeded costs for five fee schedules. These are Schedule B (Combustion of Fuel), Schedule C (Stationary Containers for the Storage of Organic Liquids), Schedule G-5 (Miscellaneous Sources), Schedule L (Asbestos Operations), and Schedule X (Community Air Monitoring). The revenue collected was lower than costs for 18 fee schedules. These are Schedule A (Hearing Board), Schedule D (Gasoline Transfer at Gasoline Dispensing Facilities, Bulk Plants and Terminals), Schedule E (Solvent Evaporating Sources), Schedule F (Miscellaneous Sources), Schedule G-1 (Miscellaneous Sources), Schedule G-2 (Miscellaneous Sources), Schedule G-3 (Miscellaneous Sources), Schedule G-4 (Miscellaneous Sources), Schedule H (Semiconductor and Related Operations),

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The Air District uses the three-year averages shown in Figure 3 in evaluating proposed amendments to Regulation 3, Fees at the fee schedule level because longer averaging periods are less sensitive to year-to-year variations in activity levels that occur due to economic or market variations and regulatory program changes affecting various source categories.

Conclusions

Air District staff has updated the analysis of cost recovery of its regulatory programs based on the methodology established by the accounting firms KPMG in 1999 and Stonefield Josephson, Inc. in 2005 and updated by Matrix Consulting Group in 2011 and in 2018. The analysis shows that fee revenue continues to fall short of recovering activity costs. For FYE 2017 to 2019, the Air District is recovering approximately 84% of its fee-related activity costs. The overall magnitude of this cost recovery gap was determined to be approximately $8.4 million.

To reduce or stabilize expenditures, the Air District has implemented various types of cost containment strategies, including developing an online permitting system for high-volume source categories, maintaining unfilled positions when feasible, and reducing service and supply budgets. In order to reduce the cost recovery gap, further fee increases will need to be evaluated in accordance with the Cost Recovery Policy adopted by the Air District's Board of Directors.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

2020 Cost Recovery Study

FIGURES

Figure 1: Total Permit Fee Revenue, Costs and Gap for FYE 2019

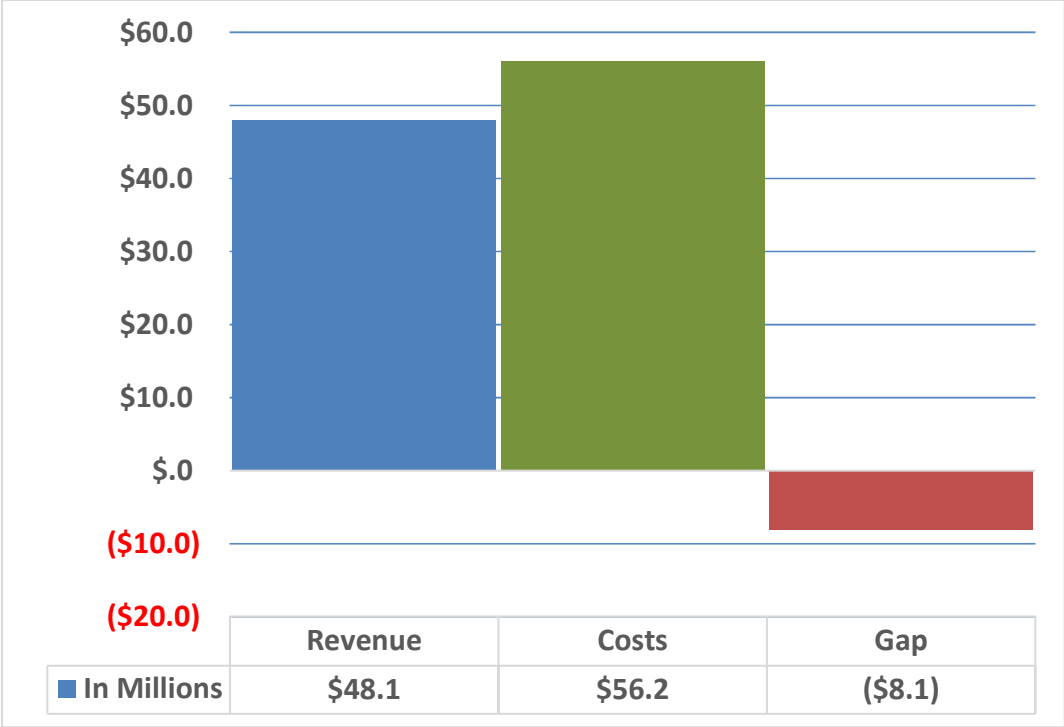

Figure 2: Fee Revenue and Program Costs by Fee Schedule, FYE 2019

	A-Hearing Board	B - Combustion of Fuel	C - Storage Organic Liquid	D - Gasoline Dispensing / Bulk Terminals	E - Solvent Evaporation	F - Miscellaneous	G1 - Miscellaneous	G2 - Miscellaneous	G3 - Miscellaneous	G4 - Miscellaneous	G5 - Miscellaneous	H - Semiconductor	I - Drycleaners	K - Waste Disposal	L - Asbestos	N - Toxic Inventory (AB2588)	P - Major Facility Review (Title V)	R-Registration	S - Naturally Occurring Asbestos	T - GreenHouse Gas	V - Open Burning	W - Refinery Emissions Tracking	X - Community Air Monitoring	Total
Revenues	47,628	7,679,636	2,233,077	6,249,199	3,200,202	2,102,701	2,637,196	761,955	656,420	1,527,227	647,983	184,622	4,498	177,413	5,057,006	263,358	5,638,883	336,060	100,513	2,963,989	211,132	139,905	933,739	43,754,341
Schedule M	-	880,691	109,905	12,636	39,061	267,090	60,344	17,111	6,668	755,273	14,796	-	-	123,213	-	-	-	592	-	-	-	-	-	2,287,380
Reg 3- 312 - Bubble	-	197,342	302,807	15,038	19,286	101,639	96,373	36,772	28,545	22,542	23,063	-	-	329	-	-	-	1,547	-	-	-	-	-	845,282
Reg 3- 327 - Renewal Processing	-	459,251	47,484	227,953	202,246	140,586	45,833	8,221	1,149	544	806	6,265	2,195	4,153	-	-	-	13,064	-	-	-	-	-	1,159,751
Reg 3- 311 - Banking	-	27,318	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	27,318
Total Revenue	**47,628**	**9,244,239**	**2,693,273**	**6,504,826**	**3,460,795**	**2,612,016**	**2,839,747**	**824,058**	**692,782**	**2,305,587**	**686,648**	**190,887**	**6,693**	**305,109**	**5,057,006**	**263,358**	**5,638,883**	**351,262**	**100,513**	**2,963,989**	**211,132**	**139,905**	**933,739**	**48,074,073**
Direct Costs																								
Direct Labor	67,327	4,951,822	447,138	3,423,477	2,725,197	1,782,297	3,621,802	1,033,054	467,078	1,778,054	215,908	161,040	4,238	1,753,926	1,410,266	491,786	3,369,463	146,277	383,252	1,290,338	390,970	328,888	111,697	30,355,293
Services and Supplies	3,848	379,147	28,953	279,042	182,076	120,927	293,144	92,450	38,213	183,018	14,853	10,362	275	127,296	58,859	26,394	284,528	4,805	28,943	1,272,092	18,527	27,000	21,914	3,496,666
Capital Outlay	0	579,062	53,363	399,066	326,431	212,485	415,586	117,470	55,410	207,326	25,134	19,387	501	209,089	8,198	55,698	392,886	701	45,591	148,906	638	41,542	16,806	3,331,277
Indirect Costs	36,534	3,029,925	275,540	2,061,635	1,707,535	1,072,870	2,218,968	638,292	296,327	1,105,686	138,277	100,276	1,949	1,114,653	964,944	270,820	1,989,325	98,405	251,662	752,107	272,501	201,766	72,791	18,672,787
Total Costs	**107,708**	**8,939,955**	**804,994**	**6,163,220**	**4,941,239**	**3,188,579**	**6,549,500**	**1,881,266**	**857,029**	**3,274,084**	**394,172**	**291,065**	**6,962**	**3,204,965**	**2,442,267**	**844,698**	**6,036,202**	**250,189**	**709,447**	**3,463,443**	**682,636**	**599,195**	**223,207**	**55,856,023**
Net Surplus/(Deficit)	**(60,081)**	**304,283**	**1,888,278**	**341,606**	**(1,480,444)**	**(576,563)**	**(3,709,753)**	**(1,057,208)**	**(164,247)**	**(968,497)**	**292,477**	**(100,178)**	**(269)**	**(2,899,856)**	**2,614,739**	**(581,340)**	**(397,319)**	**101,073**	**(608,934)**	**(499,454)**	**(471,504)**	**(459,290)**	**710,532**	**(7,781,950)**
Cost Recovery	**44.2%**	**103.4%**	**334.6%**	**105.5%**	**70.0%**	**81.9%**	**43.4%**	**43.8%**	**80.8%**	**70.4%**	**174.2%**	**65.6%**	**96.1%**	**9.5%**	**207.1%**	**31.2%**	**93.4%**	**140.4%**	**14.2%**	**85.6%**	**30.9%**	**23.3%**	**418.3%**	**86.07%**

Figure 3: Fee Revenue and Program Costs by Fee Schedule, FYE 2017-2019, 3-Year Average

	A-Hearing Board	B - Combustion of Fuel	C - Storage Organic Liquid	D - Gasoline Dispensing / Bulk Terminals	E - Solvent Evaporation	F - Miscellaneous	G1 - Miscellaneous	G2 - Miscellaneous	G3 - Miscellaneous	G4 - Miscellaneous	G5 - Miscellaneous	H - Semiconductor	I - Drycleaners	K - Waste Disposal	L - Asbestos	N - Toxic Inventory (AB2588)	P - Major Facility Review (Title V)	R-Registration	S - Naturally Occurring Asbestos	T - GreenHouse Gas	V - Open Burning	W - Refinery Emissions Tracking	X - Community Air Monitoring	Total
Revenues	22,923	7,920,402	2,189,106	5,736,757	2,823,092	1,982,551	2,481,798	650,061	635,241	1,210,547	718,798	168,356	4,454	159,372	4,387,279	268,240	5,397,772	278,599	91,026	2,629,967	177,519	201,285	1,038,541	41,173,687
Schedule M	0	676,296	205,639	32,594	31,872	753,812	84,019	13,837	4,129	258,966	120,150	0	0	112,147	0	0	0	1,441	0	0	0	0	0	2,294,901
Reg 3- 312 - Bubble	0	382,759	182,101	21,304	12,701	43,794	45,413	18,158	13,141	64,204	13,078	201	4,537	110	0	0	0	558	0	0	0	0	0	802,058
Reg 3- 327 - Renewal Processing	0	318,734	44,762	219,539	211,637	145,415	46,920	7,895	1,006	1,022	1,056	5,885	1,806	4,228	0	0	0	8,559	0	0	0	0	0	1,018,464
Reg 3- 311 - Banking	0	13,312	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	13,312
Total Revenue	**22,923**	**9,311,503**	**2,621,608**	**6,010,195**	**3,079,302**	**2,925,573**	**2,658,149**	**689,950**	**653,516**	**1,534,739**	**853,082**	**174,442**	**10,798**	**275,857**	**4,387,279**	**268,240**	**5,397,772**	**289,158**	**91,026**	**2,629,967**	**177,519**	**201,285**	**1,038,541**	**45,302,422**
Direct Costs																								
Direct Labor	87,863	5,207,508	408,889	3,776,161	2,392,210	1,693,044	3,366,754	752,538	413,754	1,795,291	205,756	175,929	8,628	1,253,014	1,386,782	288,379	3,518,663	199,071	275,024	1,577,642	334,785	276,526	197,033	29,591,245
Services and Supplies	3,222	394,927	22,228	332,682	149,335	145,450	262,324	65,327	29,638	216,275	12,012	8,826	394	88,231	109,172	17,486	340,749	10,928	20,491	582,878	32,483	23,761	24,181	2,893,001
Capital Outlay	0	482,898	32,210	346,812	204,803	146,233	394,677	70,623	38,133	220,071	15,075	12,722	2,510	135,886	153,306	23,994	318,018	1,347	29,922	178,994	3,779	41,803	24,878	2,878,694
Indirect Costs	52,344	3,161,086	258,496	2,296,770	1,513,246	998,097	2,057,059	450,666	267,299	1,056,336	134,506	110,872	5,265	802,166	1,098,563	164,659	2,072,453	163,066	180,016	924,193	279,575	165,118	121,449	18,333,302
Total Costs	**143,428**	**9,246,418**	**721,823**	**6,752,424**	**4,259,595**	**2,982,824**	**6,080,815**	**1,339,155**	**748,824**	**3,287,973**	**367,350**	**308,350**	**16,798**	**2,279,298**	**2,747,823**	**494,517**	**6,249,883**	**374,413**	**505,453**	**3,263,707**	**650,623**	**507,208**	**367,541**	**53,696,241**
Total Surplus/(Deficit)	**(120,505)**	**65,084**	**1,899,786**	**(742,229)**	**(1,180,293)**	**(57,252)**	**(3,422,665)**	**(649,205)**	**(95,308)**	**(1,753,234)**	**485,732**	**(133,907)**	**(6,000)**	**(2,003,441)**	**1,639,456**	**(226,278)**	**(852,111)**	**(85,255)**	**(414,427)**	**(633,740)**	**(473,104)**	**(305,923)**	**671,001**	**(8,393,819)**
Cost Recovery	**16%**	**101%**	**363%**	**89%**	**72%**	**98%**	**44%**	**52%**	**87%**	**47%**	**232%**	**57%**	**64%**	**12%**	**160%**	**54%**	**86%**	**77%**	**18%**	**81%**	**27%**	**40%**	**283%**	**84.37%**

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

2021 COST RECOVERY STUDY

Prepared by the staff of the
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA

January 2021

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Figures

Executive Summary

The 2021 Cost Recovery Study includes the latest fee-related cost and revenue data gathered for FYE 2020 (i.e., July 1, 2019 - June 30, 2020). The results of this 2021 Cost Recovery Study will be used as a tool in the preparation of the FYE 2022 budget, and for evaluating potential amendments to the Air District's Regulation 3: Fees.

The completed cost recovery analysis indicates that in FYE 2020 there continued to be a revenue shortfall, as overall direct and indirect costs of regulatory programs exceeded fee revenue (see Figure 2).

For the 3-year period 2018 to 2020, the Air District is recovering approximately 85 percent of its fee-related activity costs (see Figure 3). The overall magnitude of this cost recovery gap was determined to be approximately $8.5 million. This cost recovery gap was filled using General Fund revenue received by the Air District from the counties' property tax revenue.

The 2021 Cost Recovery Study also addressed fee-equity issues by analyzing whether there is a revenue shortfall at the individual Fee Schedule level. For the 3-year period, it was noted that of the twenty-three Fee Schedules for which cost recovery could be analyzed, six of the component Fee Schedules had fee revenue contributions exceeding total cost.

Background

The Air District is responsible for protecting public health and the environment by achieving and maintaining health-based national and state ambient air quality standards, and reducing public exposure to toxic air contaminants, in the nine-county Bay Area region. Fulfilling this task involves reducing air pollutant emissions from sources of regulated air pollutants and maintaining these emission reductions over time. In accordance with State law, the Air District's primary regulatory focus is on stationary sources of air pollution.

The Air District has defined units for organizational purposes (known as "Programs") to encompass activities which are either dedicated to mission-critical "direct" functions, such as permitting, rule-making, compliance assurance, sampling and testing, grant distribution, etc., or are primarily dedicated to support and administrative "indirect" functions. The Air District has also defined revenue source categories for time billing purposes (known as "Billing Codes") for all activities, i.e., the permit fee schedules, grant revenue sources, and general support activities.

The Air District's air quality regulatory activities are primarily funded by revenue from regulatory fees, government grants and subventions, and county property taxes. Between 1955 and 1970, the Air District was funded entirely through property taxes. In 1970, the California Air Resources Board (CARB) and U.S. Environmental Protection Agency began providing grant funding to the Air District. After the passage of Proposition 13, the Air District qualified as a "special district" and became eligible for AB-8 funds, which currently make up the county revenue portion of the budget.

State law authorizes the Air District to impose a schedule of fees to generate revenue to recover the costs of activities related to implementing and enforcing air quality programs. On a regular basis, the Air District has considered whether these fees result in the collection of a sufficient and appropriate amount of revenue in comparison to the cost of related program activities.

In 1999, a comprehensive review of the Air District's fee structure and revenue was completed by the firm KPMG Peat Marwick LLP (*Bay Area Air Quality Management District Cost Recovery Study, Final Report: Phase One – Evaluation of Fee Revenues and Activity Costs; February 16, 1999*). The Study recommended an activity-based costing model, which has been implemented. Also, as a result of that Study, the Air District implemented a time-keeping system. These changes improved the Air District's ability to track costs by program activities. The 1999 Cost Recovery Study indicated that fee revenue did not offset the full costs of program activities associated with sources subject to fees as authorized by State law. Property tax revenue (and in some years, fund balances) have been used to close this gap.

In 2004, the Air District's Board of Directors approved funding for an updated Cost Recovery Study that was conducted by the accounting/consulting firm Stonefield Josephson, Inc. (*Bay Area Air Quality Management District Cost Recovery Study, Final Report; March 30, 2005*). This Cost Recovery Study analyzed data collected during the three-year period FYE 2002 through FYE 2004. It compared the Air District's costs of program activities to the associated fee revenues and analyzed how these costs are apportioned amongst the fee-payers. The Study indicated that a significant cost recovery gap existed. The results of this 2005 report and subsequent internal cost recovery studies have been used by the Air District in its budgeting process, and to set various fee schedules.

In March 2011, another study was completed by Matrix Consulting Group (*Cost Recovery and Containment Study, Bay Area Air Quality Management District, Final Report; March 9, 2011*). The purpose of this Cost Recovery and Containment Study was to provide the Air District with guidance and opportunities for improvement regarding its organization, operation, and cost recovery/allocation practices. A Cost Allocation Plan was developed and implemented utilizing FYE 2010 expenditures. This Study indicated that overall, the Air District continued to under-recover the costs associated with its fee-related services. In order to reduce the cost recovery gap, further fee increases were recommended for adoption over a period of time in accordance with a Cost Recovery Policy to be adopted by the Air District's Board of Directors. Also, Matrix Consulting Group reviewed and discussed the design and implementation of the new Production System which the Air District is developing in order to facilitate cost containment through increased efficiency and effectiveness.

Air District staff initiated a process to develop a Cost Recovery Policy in May 2011, and a Stakeholder Advisory Group was convened to provide input in this regard. A Cost Recovery Policy was adopted by the Air District's Board of Directors on March 7, 2012. This policy specifies that the Air District should amend its fee regulation, in conjunction with the adoption of budgets for Fiscal Year Ending (FYE) 2014 through FYE 2018, in a manner sufficient to increase overall recovery of regulatory program activity costs to

85%. The policy also indicates that amendments to specific fee schedules should continue to be made in consideration of cost recovery analyses conducted at the fee schedule-level, with larger increases being adopted for the schedules that have the larger cost recovery gaps.

In February 2018, Matrix Consulting Group completed an update of the 2011 cost recovery and containment study for the fiscal year that ended June 30, 2017. The primary purpose of this Study was to evaluate the indirect overhead costs associated with the Air District and the cost recovery associated with the fees charged, by the Air District. The project team evaluated the Air District's FYE 2017 Programs to assess their classification as "direct" or "indirect". In addition, they audited the time tracking data associated with each of the different fee schedules. The Study provided specific recommendations related to direct and indirect cost recovery for the Air District, as well as potential cost efficiencies.

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In the post-Prop 13 era, the State Legislature determined that the cost of programs to address air pollution should be borne by the individuals and businesses that cause air pollution through regulatory and service fees. The primary authority for recovering the cost of Air District programs and activities related to stationary sources is given in Section 42311 of the Health and Safety Code (HSC), under which the Air District is authorized to:

- Recover the costs of programs related to permitted stationary sources
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The methodology for determining regulatory program revenue and costs is summarized as follows:

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Revenue from all permit renewals and applications during the FYE 2020 was assigned to the appropriate Permit Fee Schedules. This is a continued improvement over prior years' process, as more facilities are managed in the New Production System.

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Costs are expenditures that can be characterized as being either direct or indirect. Direct costs can be identified specifically with a particular program activity. Direct costs include wages and benefits, operating expenses, and capital expenditures used in direct support of the particular activities of the Air District (e.g., permit-related activities, grant distribution, etc.).

Indirect costs are those necessary for the general operation of the Air District as a whole. Often referred to as "overhead", these costs include accounting, finance, human resources, facility costs, information technology, executive management, etc. Indirect costs are allocated to other indirect Programs, using the reciprocal (double-step down) method, before being allocated to direct Programs.

Employee work time is tracked by the hour, or fraction thereof, using both Program and Billing Code detail. This time-keeping system allows for the capture of all costs allocatable to a revenue source on a level-of-effort basis.

Employee work time is allocated to activities within Programs by billing codes (BC1-BC99), only two of which indicate general support. One of these two general support codes (BC8) is identified with permitting activities of a general nature, not specifically related to a particular Fee Schedule.

Operating and capital expenses are charged through the year to each Program, as incurred. In cost recovery, these expenses, through the Program's Billing Code profile, are allocated on a pro-rata basis to each Program's revenue-related activity. For example, employees working in grant Programs (i.e., Smoking Vehicle, Mobile Source Incentive Fund, etc.) use specific billing codes (i.e., BC3, BC17, etc.). All operating/capital expense charges in those grant Programs are allocated pro-rata to those grant activities. Employees working in permit-related Programs (i.e., Air Toxics, Compliance Assurance, Source Testing, etc.) also use specific permit-related billing codes (i.e., BC8, BC21, BC29, etc.) and all operating/capital expense charges incurred by those Programs are allocated pro-rata to those Program's activity profiles, as defined by the associated billing codes.

Direct costs for permit activities include personnel, operating and capital costs based on employee work time allocated to direct permit-related activities, and to general permit-related support and administrative activities (allocated to Fee Schedules on pro-rata basis). Indirect costs for permit activities include that portion of general support personnel, operating and capital costs allocated pro-rata to permit fee revenue-related program activities.

Study Results

Figure 1 shows a summary of overall regulatory program costs and revenue for FYE 2020. Figure 2 shows the details of costs and revenue on a fee schedule basis for FYE 2020. Figure 3 shows the details of average fee schedule costs and revenue for the three-year period FYE 2018 through FYE 2020.

Discussion of Results

Figure 1 indicates that in FYE 2020 there continued to be a revenue shortfall, as the direct and indirect costs of regulatory programs exceeded fee revenue. The overall magnitude of the cost recovery gap was determined to be $9.4 million for FYE 2020. This cost recovery gap was filled by General Fund revenue received by the Air District from the counties.

Figure 2 shows that in FYE 2020 there were revenue shortfalls for most of the twenty-three fee schedules for which cost recovery can be analyzed. For FYE 2020, the Air District is recovering 84.5% of its fee-related activity costs. The revenue collected exceeded Program costs for eight fee schedules. These are, Schedule C (Stationary Containers for the Storage of Organic Liquids), Schedule D (Gasoline Transfer at Gasoline Dispensing Facilities, Bulk Plants and Terminals), Schedule E (Solvent Evaporating Sources), Schedule G-5 (Miscellaneous Sources), Schedule L (Asbestos Operations), Schedule P (Major Facility Review Fees), Schedule R (Equipment Registration Fees), and Schedule X (Community Air Monitoring). The revenue collected was less than program costs for 15 fee schedules. These are Schedule A (Hearing Board), Schedule B (Combustion of Fuels), Schedule F (Miscellaneous Sources), Schedule G-1 (Miscellaneous Sources), Schedule G-2 (Miscellaneous Sources), Schedule G-3 (Miscellaneous Sources), Schedule G-4 (Miscellaneous Sources), Schedule H (Semiconductor and Related Operations), Schedule I (Dry Cleaners), Schedule K (Solid Waste Disposal Sites), Schedule N (Toxic Inventory Fees), Schedule S (Naturally Occurring Asbestos Operations), Schedule T (Greenhouse Gas Fees), Schedule V (Open Burning), and Schedule W (Refinery Emissions Tracking),.

Figure 3 shows that over a three-year period (FYE 2018 through FYE 2020) there were revenue shortfalls for most of the twenty-three fee schedules for which cost recovery can be analyzed. For this three-year period, the Air District is recovering approximately 85.0% of its fee-related activity costs. The revenue collected exceeded costs for six fee schedules. These are Schedule C (Stationary Containers for the Storage of Organic Liquids), Schedule D (Gasoline Transfer at Gasoline Dispensing Facilities, Bulk Plants and Terminals), Schedule G-5 (Miscellaneous Sources), Schedule L (Asbestos Operations), Schedule R (Equipment Registration Fees), and Schedule X (Community Air Monitoring). The revenue collected was lower than costs for 17 fee schedules.

These are Schedule A (Hearing Board), Schedule B (Combustion of Fuel), Schedule E (Solvent Evaporating Sources), Schedule F (Miscellaneous Sources), Schedule G-1 (Miscellaneous Sources), Schedule G-2 (Miscellaneous Sources), Schedule G-3 (Miscellaneous Sources), Schedule G-4 (Miscellaneous Sources), Schedule H (Semiconductor and Related Operations), Schedule I (Dry Cleaners), Schedule K (Solid Waste Disposal Sites), Schedule N (Toxic Inventory Fees), Schedule P (Major Facility Review Fees), Schedule S (Naturally Occurring Asbestos Operations), Schedule T (Greenhouse Gas Fees), Schedule V (Open Burning), and Schedule W (Refinery Emissions Tracking).

The Air District uses the three-year averages shown in Figure 3 in evaluating proposed amendments to Regulation 3, Fees at the fee schedule level because longer averaging periods are less sensitive to year-to-year variations in activity levels that occur due to economic or market variations and regulatory program changes affecting various source categories.

Conclusions

Air District staff has updated the analysis of cost recovery of its regulatory programs based on the methodology established by the accounting firms KPMG in 1999 and Stonefield Josephson, Inc. in 2005 and updated by Matrix Consulting Group in 2011 and in 2018. The analysis shows that fee revenue continues to fall short of recovering activity costs. For FYE 2018 to 2020, the Air District is recovering approximately 85.0% of its fee-related activity costs. The overall magnitude of this cost recovery gap was determined to be approximately $8.5 million.

To reduce or stabilize expenditures, the Air District has implemented various types of cost containment strategies, including developing an online permitting system for high-volume source categories, maintaining unfilled positions when feasible, and reducing service and supply budgets. In order to reduce the cost recovery gap, further fee increases will need to be evaluated in accordance with the Cost Recovery Policy adopted by the Air District's Board of Directors.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

2021 Cost Recovery Study

FIGURES

Figure 1: Total Permit Fee Revenue, Costs and Gap for FYE 2020 (in Millions)

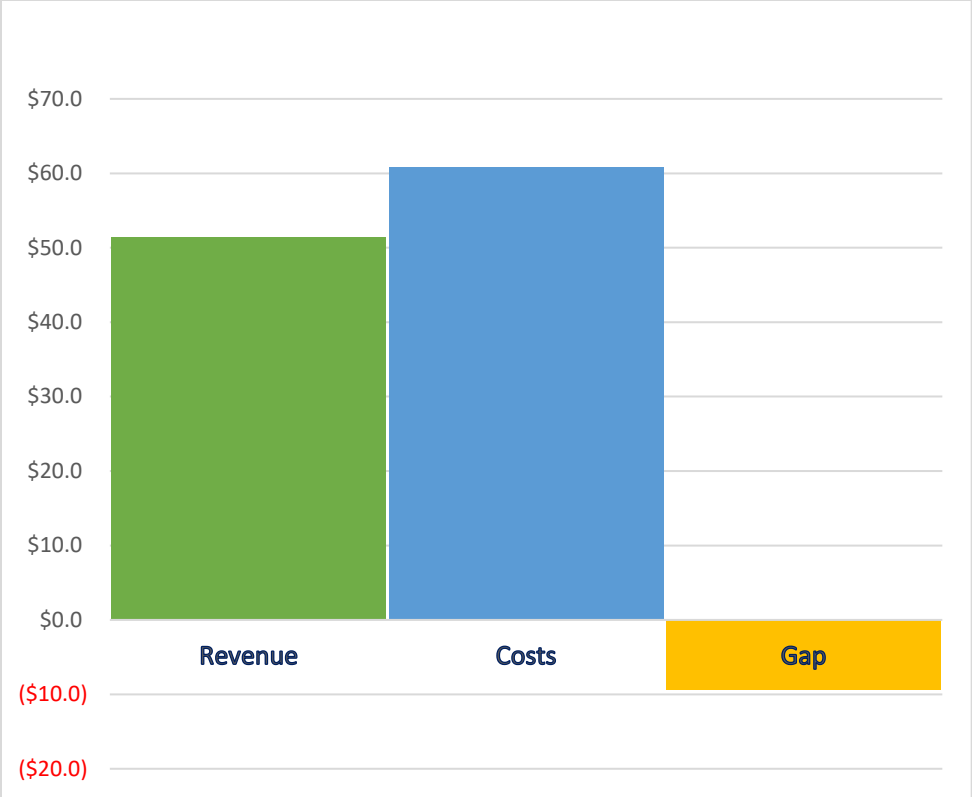

Figure 2: Fee Revenue and Program Costs by Fee Schedule, FYE 2020

		Direct Cost	Indirect Cost	Total Cost	Application & Renewal Revenue	Schedule M	Reg 3-312 Bubble	Reg 3-327 Renewal Processing	Reg 3-311 - Banking	Total Revenue	3 Yr Surplus Deficit	Cost Recovery %
A	Hearing Board	34,904	31,170	66,074	37,093	0	0	0		37,093	(28,981)	56.1%
B	Combustion of Fuel	6,502,684	3,767,955	10,270,639	8,308,863	694,801	193,890	462,260	11,176	9,670,991	(599,648)	94.2%
C	Storage Organic Liquid	754,010	428,562	1,182,572	2,258,275	139,716	172,986	32,950		2,603,926	1,421,354	220.2%
D	Gasoline Dispensing / Bulk T	3,629,779	2,103,899	5,733,678	6,737,714	43,647	58,089	238,047		7,077,497	1,343,820	123.4%
E	Solvent Evaporation	2,554,931	1,590,928	4,145,859	4,028,203	68,820	38,257	203,423		4,338,702	192,843	104.7%
F	Miscellaneous	2,720,691	1,569,518	4,290,209	2,395,565	162,906	90,929	141,782		2,791,183	(1,499,026)	65.1%
G1	Miscellaneous	3,797,994	2,189,792	5,987,787	3,092,209	147,602	94,370	43,502		3,377,683	(2,610,104)	56.4%
G2	Miscellaneous	1,107,628	644,724	1,752,352	992,082	33,564	68,224	7,851		1,101,720	(650,631)	62.9%
G3	Miscellaneous	739,290	445,393	1,184,682	701,913	21,684	63,219	567		787,383	(397,300)	66.5%
G4	Miscellaneous	2,219,283	1,295,895	3,515,178	1,448,914	792,773	61,887	619		2,304,192	(1,210,986)	65.5%
G5	Miscellaneous	339,096	226,803	565,899	670,430	31,853	61,798	335		764,415	198,516	135.1%
H	Semiconductor	170,674	99,621	270,295	236,693	0	0	4,867		241,559	(28,736)	89.4%
I	Drycleaners	26,507	17,098	43,605	2,363	0	0	358		2,721	(40,884)	6.2%
K	Waste Disposal	2,592,513	1,606,577	4,199,091	186,010	114,805	0	3,991		304,806	(3,894,285)	7.3%
L	Asbestos	1,515,640	1,204,827	2,720,468	4,283,337	0	0	0		4,283,337	1,562,869	157.4%
N	Toxic Inventory (AB2588)	1,084,457	535,641	1,620,097	754,864	0	0	0		754,864	(865,233)	46.6%
P	Major Facility Review (Title V	3,469,393	2,123,430	5,592,823	6,096,660	0	0	0		6,096,660	503,837	109.0%
R	Registration	49,201	37,869	87,071	350,329	2,365	0	13,124		365,818	278,747	420.1%
S	Naturally Occurring Asbestos	347,150	254,183	601,333	97,167	0	0	0		97,167	(504,166)	16.2%
T	GreenHouse Gas	3,112,676	1,516,281	4,628,957	3,136,724	0	0	0		3,136,724	(1,492,233)	67.8%
V	Open Burning	471,967	393,719	865,685	203,364	0	0	0		203,364	(662,322)	23.5%
W	Refinery Emissions Tracking	871,680	494,150	1,365,830	152,547	0	0	0		152,547	(1,213,283)	11.2%
X	Community Air Monitoring	47,835	29,624	77,459	860,838	0	0	0		860,838	783,379	1111.4%
	Total	**38,159,982**	**22,607,659**	**60,767,641**	**47,032,155**	**2,254,536**	**903,647**	**1,153,676**	**11,176**	**51,355,190**	**(9,412,451)**	**84.51%**

Figure 3: Fee Revenue and Program Costs by Fee Schedule, FYE 2018-2020, 3-Year Average

		Direct Cost	Indirect Cost	Total Cost	Application & Renewal Revenue	Schedule M	Reg 3-312 Bubble	Reg 3-327 Renewal Processing	Reg 3-311 - Banking	Total Revenue	3 Yr Surplus Deficit	Cost Recovery %
A	Hearing Board	78,865	45,023	123,889	33,380	0	0	0		33,380	(90,508)	26.9%
B	Combustion of Fuel	6,154,144	3,326,013	9,480,157	8,049,572	577,127	255,605	438,310	14,727	9,335,341	(144,816)	98.5%
C	Storage Organic Liquid	554,755	302,251	857,006	2,236,878	200,813	183,115	38,377		2,659,183	1,802,177	310.3%
D	Gasoline Dispensing / Bulk T	4,127,072	2,205,973	6,333,045	6,241,800	24,150	25,498	228,519		6,519,967	186,922	103.0%
E	Solvent Evaporation	2,836,672	1,588,611	4,425,284	3,322,888	49,874	25,453	204,841		3,603,056	(822,228)	81.4%
F	Miscellaneous	2,302,552	1,239,686	3,542,238	2,178,505	679,721	74,104	139,803		3,072,134	(470,104)	86.7%
G1	Miscellaneous	3,885,148	2,084,356	5,969,504	2,721,065	88,270	76,869	45,676		2,931,880	(3,037,624)	49.1%
G2	Miscellaneous	1,020,280	551,461	1,571,742	795,842	25,025	40,899	8,216		869,982	(701,760)	55.4%
G3	Miscellaneous	597,927	338,224	936,151	653,452	10,820	34,213	1,195		699,680	(236,471)	74.7%
G4	Miscellaneous	2,138,918	1,144,892	3,283,810	1,375,225	522,104	84,833	943		1,983,105	(1,300,705)	60.4%
G5	Miscellaneous	269,732	161,613	431,345	726,420	20,279	33,677	943		781,319	349,974	181.1%
H	Semiconductor	181,418	98,965	280,383	208,760	0	201	5,187		214,149	(66,235)	76.4%
I	Drycleaners	16,398	8,592	24,989	3,759	0	4,537	1,595		9,892	(15,098)	39.6%
K	Waste Disposal	2,065,032	1,182,426	3,247,458	171,255	120,037	110	3,873		295,275	(2,952,182)	9.1%
L	Asbestos	1,533,882	1,057,864	2,591,746	4,445,502	0	0	0		4,445,502	1,853,756	171.5%
N	Toxic Inventory (AB2588)	612,608	299,658	912,266	448,424	0	0	0		448,424	(463,842)	49.2%
P	Major Facility Review (Title V	3,992,021	2,132,956	6,124,977	5,733,911	0	0	0		5,733,911	(391,067)	93.6%
R	Registration	128,309	85,503	213,812	316,341	2,229	558	12,934		332,062	118,250	155.3%
S	Naturally Occurring Asbestos	420,488	251,837	672,325	89,437	0	0	0		89,437	(582,888)	13.3%
T	GreenHouse Gas	2,828,758	1,179,936	4,008,694	2,948,942	0	0	0		2,948,942	(1,059,752)	73.6%
V	Open Burning	380,723	275,387	656,110	194,713	0	0	0		194,713	(461,397)	29.7%
W	Refinery Emissions Tracking	606,748	325,416	932,164	144,134	0	0	0		144,134	(788,030)	15.5%
X	Community Air Monitoring	147,424	74,027	221,451	948,431	0	0	0		948,431	726,980	428.3%
	Total	**36,879,874**	**19,960,670**	**56,840,545**	**43,988,636**	**2,320,447**	**839,674**	**1,130,413**	**14,727**	**48,293,897**	**(8,546,647)**	**84.96%**

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

2022 COST RECOVERY REPORT

Prepared by the staff of the
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA

February 2022
Updated May 2022

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Figures

Executive Summary

The 2022 Cost Recovery Report includes the latest fee-related cost and revenue data gathered for FYE 2021 (i.e., July 1, 2019 - June 30, 2021). The results of this 2022 Cost Recovery Report will be used as a tool in the preparation of the FYE 2023 budget, and for evaluating potential amendments to the Air District's Regulation 3: Fees.

The completed cost recovery analysis indicates that in FYE 2021 there continued to be a revenue shortfall, as overall direct and indirect costs of regulatory programs exceeded fee revenue (see Figure 2).

For the 3-year period 2019 to 2021, the Air District is recovering approximately 83.8 percent of its fee-related activity costs (see Figure 3). The overall magnitude of this cost recovery gap was determined to be approximately $10.2 million. This cost recovery gap was filled using General Fund revenue received by the Air District from the counties' property tax revenue. The Air District uses the three-year averages in evaluating proposed amendments to Regulation 3, Fees at the fee schedule level because longer averaging periods are less sensitive to year-to-year variations in activity levels that occur due to economic or market variations and regulatory program changes affecting various source categories.

The 2022 Cost Recovery Report also addressed fee-equity issues by analyzing whether there is a revenue shortfall at the individual Fee Schedule level. For the 3-year period, it was noted that of the twenty-two Fee Schedules for which cost recovery could be analyzed, six of the component Fee Schedules had fee revenue contributions exceeding total cost.

Background

The Air District is responsible for protecting public health and the environment by achieving and maintaining health-based national and state ambient air quality standards, and reducing public exposure to toxic air contaminants, in the nine-county Bay Area region. Fulfilling this task involves reducing air pollutant emissions from sources of regulated air pollutants and maintaining these emission reductions over time. In accordance with State law, the Air District's primary regulatory focus is on stationary sources of air pollution.

The Air District has defined units for organizational purposes (known as "Programs") to encompass activities which are either dedicated to mission-critical "direct" functions, such as permitting, rule-making, compliance assurance, sampling and testing, grant distribution, etc., or are primarily dedicated to support and administrative "indirect" functions. The Air District has also defined revenue source categories for time billing purposes (known as "Billing Codes") for all activities, i.e., the permit fee schedules, grant revenue sources, and general support activities.

The Air District's air quality regulatory activities are primarily funded by revenue from regulatory fees, government grants and subventions, and county property taxes. Between 1955 and 1970, the Air District was funded entirely through property taxes. In

1970, the California Air Resources Board (CARB) and U.S. Environmental Protection Agency began providing grant funding to the Air District. After the passage of Proposition 13, the Air District qualified as a "special district" and became eligible for AB-8 funds, which currently make up the county revenue portion of the budget.

State law authorizes the Air District to impose a schedule of fees to generate revenue to recover the costs of activities related to implementing and enforcing air quality programs. On a regular basis, the Air District has considered whether these fees result in the collection of a sufficient and appropriate amount of revenue in comparison to the cost of related program activities.

In 1999, a comprehensive review of the Air District's fee structure and revenue was completed by the firm KPMG Peat Marwick LLP (*Bay Area Air Quality Management District Cost Recovery Study, Final Report: Phase One – Evaluation of Fee Revenues and Activity Costs; February 16, 1999*). The Study recommended an activity-based costing model, which has been implemented. Also, as a result of that Study, the Air District implemented a time-keeping system. These changes improved the Air District's ability to track costs by program activities. The 1999 Cost Recovery Study indicated that fee revenue did not offset the full costs of program activities associated with sources subject to fees as authorized by State law. Property tax revenue (and in some years, fund balances) have been used to close this gap.

In 2004, the Air District's Board of Directors approved funding for an updated Cost Recovery Study that was conducted by the accounting/consulting firm Stonefield Josephson, Inc. (*Bay Area Air Quality Management District Cost Recovery Study, Final Report; March 30, 2005*). This Cost Recovery Study analyzed data collected during the three-year period FYE 2002 through FYE 2004. It compared the Air District's costs of program activities to the associated fee revenues and analyzed how these costs are apportioned amongst the fee-payers. The Study indicated that a significant cost recovery gap existed. The results of this 2005 report and subsequent internal cost recovery studies have been used by the Air District in its budgeting process, and to set various fee schedules.

In March 2011, another study was completed by Matrix Consulting Group (*Cost Recovery and Containment Study, Bay Area Air Quality Management District, Final Report; March 9, 2011*). The purpose of this Cost Recovery and Containment Study was to provide the Air District with guidance and opportunities for improvement regarding its organization, operation, and cost recovery/allocation practices. A Cost Allocation Plan was developed and implemented utilizing FYE 2010 expenditures. This Study indicated that overall, the Air District continued to under-recover the costs associated with its fee-related services. In order to reduce the cost recovery gap, further fee increases were recommended for adoption over a period of time in accordance with a Cost Recovery Policy to be adopted by the Air District's Board of Directors. Also, Matrix Consulting Group reviewed and discussed the design and implementation of the new Production System which the Air District is developing in order to facilitate cost containment through increased efficiency and effectiveness.

Air District staff initiated a process to develop a Cost Recovery Policy in May 2011, and a Stakeholder Advisory Group was convened to provide input in this regard. A Cost

Recovery Policy was adopted by the Air District's Board of Directors on March 7, 2012. This policy specifies that the Air District should amend its fee regulation, in conjunction with the adoption of budgets for Fiscal Year Ending (FYE) 2014 through FYE 2018, in a manner sufficient to increase overall recovery of regulatory program activity costs to at least 85%. The policy also indicates that amendments to specific fee schedules should continue to be made in consideration of cost recovery analyses conducted at the fee schedule-level, with larger increases being adopted for the schedules that have the larger cost recovery gaps.

In February 2018, Matrix Consulting Group (Matrix) completed an update of the 2011 cost recovery and containment study for the fiscal year that ended June 30, 2017. The primary purpose of this Study was to evaluate the indirect overhead costs associated with the Air District and the cost recovery associated with the fees charged, by the Air District. The project team evaluated the Air District's FYE 2017 Programs to assess their classification as "direct" or "indirect". In addition, they audited the time tracking data associated with each of the different fee schedules. The Study provided specific recommendations related to direct and indirect cost recovery for the Air District, as well as potential cost efficiencies. The Air District is currently working with Matrix to complete an update of the February 2018 cost recovery and containment study.

This 2022 Cost Recovery Report incorporated the accounting methodologies developed by KPMG in 1999, Stonefield Josephson, Inc. in 2005 and Matrix Consulting Group in 2011. The Study included the latest cost and revenue data gathered for FYE 2021 (i.e., July 1, 2019 - June 30, 2021). The results of the 2022 Cost Recovery Report will be used as a tool in the preparation of the budget for FYE 2023, and for evaluating potential amendments to the Air District's Regulation 3: Fees.

Legal Authority

In the post-Prop 13 era, the State Legislature determined that the cost of programs to address air pollution should be borne by the individuals and businesses that cause air pollution through regulatory and service fees. The primary authority for recovering the cost of Air District programs and activities related to stationary sources is given in Section 42311 of the Health and Safety Code (HSC), under which the Air District is authorized to:

- Recover the costs of programs related to permitted stationary sources
- Recover the costs of programs related to area-wide and indirect sources of emissions which are regulated, but for which permits are not issued
- Recover the costs of certain hearing board proceedings
- Recover the costs related to programs that regulate toxic air contaminants

The measure of the revenue that may be recovered through stationary source fees is the full cost of all activities related to these sources, including all direct Program costs and a commensurate share of indirect Program costs. Such fees are valid so long as they do not exceed the reasonable cost of the service or regulatory program for which the fee is charged, and are apportioned amongst fee payers such that the costs allocated

to each fee-payer bears a fair or reasonable relationship to its burden on, and benefits from, the regulatory system.

Air districts have restrictions in terms of the rate at which permit fees may be increased. Under HSC Section 41512.7, permit fees may not be increased by more than 15 percent on a facility in any calendar year.

Study Methodology

The methodology for determining regulatory program revenue and costs is summarized as follows:

Revenue

Revenue from all permit renewals and applications during the FYE 2021 was assigned to the appropriate Permit Fee Schedules. This is a continued improvement over prior years' process, as more facilities are managed in the New Production System.

Costs

Costs are expenditures that can be characterized as being either direct or indirect. Direct costs can be identified specifically with a particular program activity. Direct costs include wages and benefits, operating expenses, and capital expenditures used in direct support of the particular activities of the Air District (e.g., permit-related activities, grant distribution, etc.).

Indirect costs are those necessary for the general operation of the Air District as a whole. Often referred to as "overhead", these costs include accounting, finance, human resources, facility costs, information technology, executive management, etc. Indirect costs are allocated to other indirect Programs, using the reciprocal (double-step down) method, before being allocated to direct Programs.

Employee work time is tracked by the hour, or fraction thereof, using both Program and Billing Code detail. This time-keeping system allows for the capture of all costs allocatable to a revenue source on a level-of-effort basis.

Employee work time is allocated to activities within Programs by billing codes (BC1-BC99), only two of which indicate general support. One of these two general support codes (BC8) is identified with permitting activities of a general nature, not specifically related to a particular Fee Schedule.

Operating and capital expenses are charged through the year to each Program, as incurred. In cost recovery, these expenses, through the Program's Billing Code profile, are allocated on a pro-rata basis to each Program's revenue-related activity. For example, employees working in grant Programs (i.e., Smoking Vehicle, Mobile Source Incentive Fund, etc.) use specific billing codes (i.e., BC3, BC17, etc.). All operating/capital expense charges in those grant Programs are allocated pro-rata to those grant activities. Employees working in permit-related Programs (i.e., Air Toxics,

Compliance Assurance, Source Testing, etc.) also use specific permit-related billing codes (i.e., BC8, BC21, BC29, etc.) and all operating/capital expense charges incurred by those Programs are allocated pro-rata to those Program's activity profiles, as defined by the associated billing codes.

Direct costs for permit activities include personnel, operating and capital costs based on employee work time allocated to direct permit-related activities, and to general permit-related support and administrative activities (allocated to Fee Schedules on pro-rata basis). Indirect costs for permit activities include that portion of general support personnel, operating and capital costs allocated pro-rata to permit fee revenue-related program activities.

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Figure 1 shows a summary of overall regulatory program costs and revenue for FYE 2021. Figure 2 shows the details of costs and revenue on a fee schedule basis for FYE 2021. Figure 3 shows the details of average fee schedule costs and revenue for the three-year period FYE 2019 through FYE 2021.

Discussion of Results

Figure 1 indicates that in FYE 2021 there continued to be a revenue shortfall, as the direct and indirect costs of regulatory programs exceeded fee revenue. The overall magnitude of the cost recovery gap was determined to be $10.2 million for FYE 2021. This cost recovery gap was filled by General Fund revenue received by the Air District from the counties.

Figure 2 shows that in FYE 2021 there were revenue shortfalls for most of the twenty-three fee schedules for which cost recovery can be analyzed. For FYE 2021, the Air District is recovering 83.4% of its fee-related activity costs. The revenue collected exceeded Program costs for seven fee schedules. These are, Schedule C (Stationary Containers for the Storage of Organic Liquids), Schedule D (Gasoline Transfer at Gasoline Dispensing Facilities, Bulk Plants and Terminals), Schedule G-5 (Miscellaneous Sources), Schedule L (Asbestos Operations), Schedule N (Toxic Inventory Fees), Schedule P (Major Facility Review Fees), and Schedule R (Equipment Registration Fees). The revenue collected was less than program costs for 15 fee schedules. These are Schedule A (Hearing Board), Schedule B (Combustion of Fuels), Schedule E (Solvent Evaporating Sources), Schedule F (Miscellaneous Sources), Schedule G-1 (Miscellaneous Sources), Schedule G-2 (Miscellaneous Sources), Schedule G-3 (Miscellaneous Sources), Schedule G-4 (Miscellaneous Sources), Schedule H (Semiconductor and Related Operations), Schedule I (Dry Cleaners), Schedule K (Solid Waste Disposal Sites), Schedule S (Naturally Occurring Asbestos Operations), Schedule T (Greenhouse Gas Fees), Schedule V (Open Burning), and Schedule W (Refinery Emissions Tracking).

Figure 3 shows that over a three-year period (FYE 2019 through FYE 2021) there were revenue shortfalls for most of the twenty-two fee schedules for which cost recovery can be analyzed. For this three-year period, the Air District is recovering approximately 83.8% of its fee-related activity costs. The revenue collected exceeded costs for six fee

schedules. These are Schedule C (Stationary Containers for the Storage of Organic Liquids), Schedule D (Gasoline Transfer at Gasoline Dispensing Facilities, Bulk Plants and Terminals), Schedule G-5 (Miscellaneous Sources), Schedule L (Asbestos Operations), Schedule P (Major Facility Review, Title V), and Schedule R (Equipment Registration Fees). The revenue collected was lower than costs for 16 fee schedules. These are Schedule A (Hearing Board), Schedule B (Combustion of Fuel), Schedule E (Solvent Evaporating Sources), Schedule F (Miscellaneous Sources), Schedule G-1 (Miscellaneous Sources), Schedule G-2 (Miscellaneous Sources), Schedule G-3 (Miscellaneous Sources), Schedule G-4 (Miscellaneous Sources), Schedule H (Semiconductor and Related Operations), Schedule I (Dry Cleaners), Schedule K (Solid Waste Disposal Sites), Schedule N (Toxic Inventory Fees), Schedule P (Major Facility Review Fees), Schedule S (Naturally Occurring Asbestos Operations), Schedule T (Greenhouse Gas Fees), Schedule V (Open Burning), and Schedule W (Refinery Emissions Tracking).

The Air District uses the three-year averages shown in Figure 3 in evaluating proposed amendments to Regulation 3, Fees at the fee schedule level because longer averaging periods are less sensitive to year-to-year variations in activity levels that occur due to economic or market variations and regulatory program changes affecting various source categories.

Conclusions

Air District staff has updated the analysis of cost recovery of its regulatory programs based on the methodology established by the accounting firms KPMG in 1999 and Stonefield Josephson, Inc. in 2005 and updated by Matrix Consulting Group in 2011 and in 2018. The analysis shows that fee revenue continues to fall short of recovering activity costs. For FYE 2019 to 2021, the Air District is recovering approximately 83.8% of its fee-related activity costs. The overall magnitude of this cost recovery gap was determined to be approximately $10.2 million.

To reduce or stabilize expenditures, the Air District has implemented various types of cost containment strategies, including developing an online permitting system for high-volume source categories and expanding it to all source categories, maintaining unfilled positions when feasible, and reducing service and supply budgets. In addition, a management audit is currently underway that is analyzing the Air District's programs and the use of staff resources for its programs. In order to reduce the cost recovery gap, further fee increases will need to be evaluated in accordance with the Cost Recovery Policy adopted by the Air District's Board of Directors.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

2022 Cost Recovery Report

FIGURES

Figure 1: Total Permit Fee Revenue, Costs and Gap for FYE 2021 (in Millions)

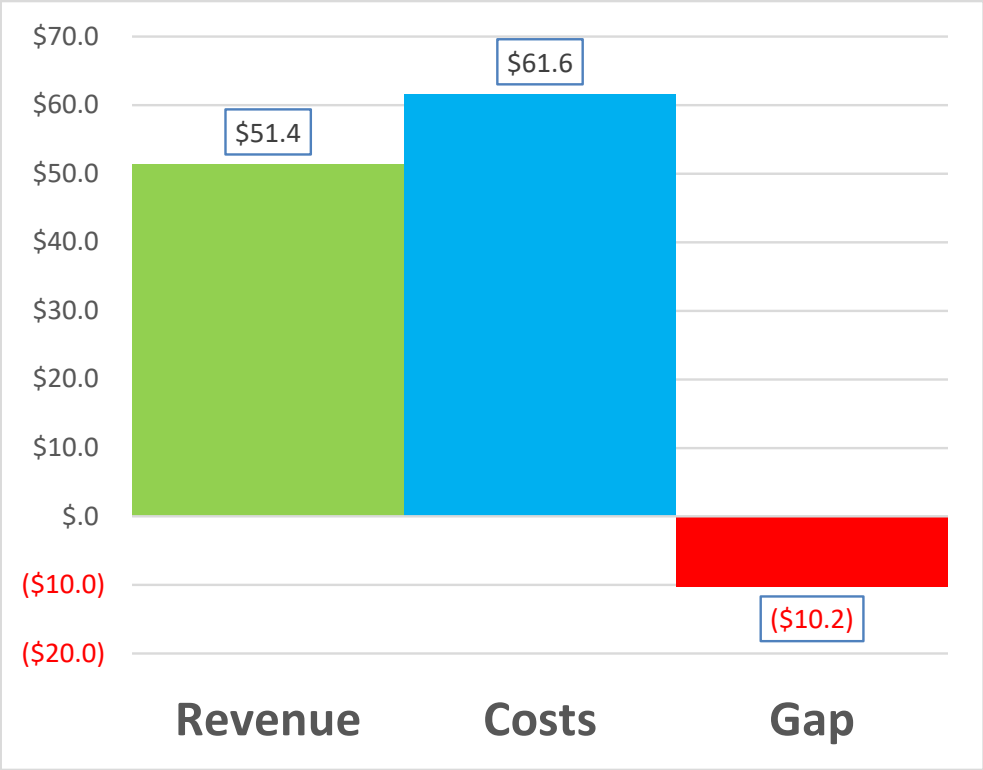

Figure 2: Fee Revenue and Program Costs by Fee Schedule, FYE 2021

Fee Schedule	Direct Cost	Indirect Cost	Total Cost	Application & Renewal Revenue	Schedule M	Reg 3-312 Bubble	Reg 3-327.1 Renewal Processing	Reg 3-327.2 - AB617 Fee	Reg 3-311 - Banking	Total Revenue	Surplus/ Deficit	Cost Recovery %
FS_A-Hearing Board	$56,402	$28,208	$84,610	$14,318	$0	$0	$0	$0	$0	$14,318	($70,292)	16.92%
FS_B-Combustion of Fuel	$7,726,960	$3,923,244	$11,650,204	$8,645,644	$675,657	$185,643	$478,794	$258,497	$7,620	$10,251,855	($1,398,348)	88.00%
FS_C-Storage Organic Liquid	$1,068,686	$518,311	$1,586,997	$2,425,794	$141,097	$164,370	$33,347	$117,138	$0	$2,881,746	$1,294,749	181.58%
FS_D	$4,245,809	$2,265,650	$6,511,460	$6,888,556	$47,035	$59,251	$240,285	$47,495	$0	$7,282,623	$771,163	111.84%
FS_E-Solvent Evaporation	$2,163,333	$1,151,288	$3,314,621	$2,810,725	$68,961	$38,453	$194,272	$29,561	$0	$3,141,973	($172,648)	94.79%
FS_F-Misc.	$3,374,077	$1,671,605	$5,045,682	$2,198,594	$151,028	$87,616	$139,464	$160,529	$0	$2,737,231	($2,308,450)	54.25%
FS_G1-Misc.	$3,944,152	$2,073,463	$6,017,615	$3,169,503	$148,630	$91,132	$42,963	$79,901	$0	$3,532,130	($2,485,485)	58.70%
FS_G2-Misc.	$1,482,840	$797,629	$2,280,468	$1,028,305	$35,490	$67,996	$7,754	$39,801	$0	$1,179,345	($1,101,123)	51.72%
FS_G3-Misc.	$985,122	$565,482	$1,550,603	$731,826	$24,454	$63,793	$596	$37,938	$0	$858,606	($691,997)	55.37%
FS_G4-Misc.	$2,097,031	$1,074,611	$3,171,642	$1,546,403	$617,392	$62,646	$558	$41,136	$0	$2,268,137	($903,506)	71.51%
FS_G5-Misc.	$545,053	$300,970	$846,023	$748,634	$34,567	$62,482	$349	$35,734	$0	$881,766	$35,743	104.22%
FS_H-Semiconductor	$221,204	$114,991	$336,195	$191,526	$0	$0	$4,738	$0	$0	$196,264	($139,931)	58.38%
FS_I-Drycleaners	$11,530	$6,843	$18,373	$2,146	$0	$0	$200	$0	$0	$2,346	($16,027)	12.77%
FS_K-Waste Disposal	$1,983,563	$1,114,094	$3,097,657	$207,361	$107,226	$0	$3,896	$10,547	$0	$329,030	($2,768,627)	10.62%
FS_L-Asbestos	$1,546,351	$986,036	$2,532,388	$3,989,403	$0	$0	$0	$0	$0	$3,989,403	$1,457,015	157.54%
FS_N-AB 2588	$1,194,223	$568,270	$1,762,492	$1,972,317	$0	$0	$0	$0	$0	$1,972,317	$209,825	111.90%
FS_P-Title V	$3,631,018	$2,029,885	$5,660,903	$6,188,182	$0	$0	$0	$0	$0	$6,188,182	$527,279	109.31%
FS_R-Registration	$79,494	$45,046	$124,540	$285,718	$2,136	$0	$20,203	$8,464	$0	$316,521	$191,981	254.15%
FS_S-NatOccAsbBillable	$387,951	$212,922	$600,874	$105,251	$0	$0	$0	$0	$0	$105,251	($495,623)	17.52%
FS_T-GHG	$2,077,606	$943,056	$3,020,663	$2,890,490	$0	$0	$0	$0	$0	$2,890,490	($130,173)	95.69%
FS_V-Open Burning	$435,117	$249,791	$684,908	$212,252	$0	$0	$0	$0	$0	$212,252	($472,656)	30.99%
FS_W-PetroleumRefiningEmiss	$1,149,167	$570,251	$1,719,417	$152,547	$0	$0	$0	$0	$0	$152,547	($1,566,870)	8.87%
	$40,406,691	**$21,211,645**	**$61,618,336**	**$46,405,496**	**$2,053,673**	**$883,383**	**$1,167,419**	**$866,741**	**$7,620**	**$51,384,333**	**($10,234,003)**	**83.39%**

Figure 3: Fee Revenue and Program Costs by Fee Schedule, FYE 2019-2021, 3-Year Average

Fee Schedule	Direct Cost	Indirect Cost	Total Cost	Application & Renewal Revenue	Schedule M	Reg 3-312 Bubble	Reg 3-327.1 Renewal Processing	Reg 3-327.2 AB617 Fee	Reg 3-311 - Banking	Total Revenue	Surplus/ Deficit	Cost Recovery %
FS_A-Hearing Board	$54,160	$31,971	$86,131	$33,013	$0	$0	$0	$0	$0	$33,013	($53,118)	38.27%
FS_B-Combustion of Fuel	$6,713,225	$3,573,708	$10,286,933	$8,211,381	$750,383	$192,292	$466,769	$258,497	$15,371	$9,722,362	($564,571)	94.51%
FS_C-Storage Organic Liquid	$784,050	$407,471	$1,191,521	$2,305,715	$130,239	$213,388	$37,927	$117,138	$0	$2,726,315	$1,534,794	228.81%
FS_D	$3,992,391	$2,143,728	$6,136,119	$6,625,156	$34,439	$44,126	$235,429	$47,495	$0	$6,954,982	$818,863	113.34%
FS_E-Solvent Evaporation	$2,650,656	$1,483,250	$4,133,906	$3,346,377	$58,947	$31,999	$199,980	$29,561	$0	$3,647,157	($486,750)	88.23%
FS_F-Misc.	$2,736,826	$1,437,997	$4,174,823	$2,232,287	$193,675	$93,395	$140,611	$160,529	$0	$2,713,477	($1,461,346)	65.00%
FS_G1-Misc.	$4,024,226	$2,160,741	$6,184,967	$2,966,303	$118,859	$93,958	$44,099	$79,901	$0	$3,249,853	($2,935,114)	52.54%
FS_G2-Misc.	$1,277,814	$693,548	$1,971,362	$927,447	$28,722	$57,664	$7,942	$39,801	$0	$1,035,041	($936,321)	52.50%
FS_G3-Misc.	$761,704	$435,734	$1,197,438	$696,720	$17,602	$51,852	$770	$37,938	$0	$779,590	($417,848)	65.10%
FS_G4-Misc.	$2,161,571	$1,158,731	$3,320,301	$1,507,515	$721,813	$49,025	$574	$41,136	$0	$2,292,638	($1,027,663)	69.05%
FS_G5-Misc.	$380,014	$222,017	$602,031	$689,016	$27,072	$49,114	$497	$35,734	$0	$777,610	$175,579	129.16%
FS_H-Semiconductor	$194,222	$104,963	$299,185	$204,280	$0	$0	$5,290	$0	$0	$209,570	($89,615)	70.05%
FS_I-Drycleaners	$14,350	$8,630	$22,980	$3,002	$0	$0	$918	$0	$0	$3,920	($19,060)	17.06%
FS_K-Waste Disposal	$2,222,129	$1,278,442	$3,500,571	$190,262	$115,081	$110	$4,013	$10,547	$0	$312,981	($3,187,589)	8.94%
FS_L-Asbestos	$1,513,105	$1,051,936	$2,565,041	$4,443,249	$0	$0	$0	$0	$0	$4,443,249	$1,878,208	173.22%
FS_N-AB 2588	$950,852	$458,243	$1,409,096	$996,846	$0	$0	$0	$0	$0	$996,846	($412,250)	70.74%
FS_P-Title V	$3,715,763	$2,047,547	$5,763,310	$5,974,575	$0	$0	$0	$0	$0	$5,974,575	$211,266	103.67%
FS_R-Registration	$93,493	$60,440	$153,933	$324,036	$1,697	$516	$15,464	$8,464	$0	$344,534	$190,601	223.82%
FS_S-NatOccAsbBillable	$397,629	$239,589	$637,218	$100,977	$0	$0	$0	$0	$0	$100,977	($536,241)	15.85%
FS_T-GHG	$2,633,873	$1,070,481	$3,704,354	$2,997,067	$0	$0	$0	$0	$0	$2,997,067	($707,287)	80.91%
FS_V-Open Burning	$439,073	$305,337	$744,410	$208,916	$0	$0	$0	$0	$0	$208,916	($535,494)	28.06%
FS_W-PetroleumRefiningEmiss	$806,092	$422,056	$1,228,148	$148,333	$0	$0	$0	$0	$0	$148,333	($1,079,814)	12.08%
	$38,517,219	**$20,796,558**	**$59,313,778**	**$45,132,472**	**$2,198,530**	**$877,438**	**$1,160,282**	**$866,741**	**$15,371**	**$49,673,006**	**($9,640,771)**	**83.75%**

SCHEDULE P
MAJOR FACILITY REVIEW FEES
(Adopted November 3, 1993)

1. MFR / SYNTHETIC MINOR ANNUAL FEES

Each facility, which is required to undergo major facility review in accordance with the requirements of Regulation 2, Rule 6, shall pay annual fees (1a and 1b below) for each source holding a District Permit to Operate. These fees shall be in addition to and shall be paid in conjunction with the annual renewal fees paid by the facility. However, these MFR permit fees shall not be included in the basis to calculate Alternative Emission Control Plan (bubble) or toxic air contaminant surcharges. If a major facility applies for and obtains a synthetic minor operating permit, the requirement to pay the fees in 1a and 1b shall terminate as of the date the APCO issues the synthetic minor operating permit.

a. MFR SOURCE FEE ..... $1,070 per source

b. MFR EMISSIONS FEE..... $42.08 per ton of regulated air pollutants emitted

Each MFR facility and each synthetic minor facility shall pay an annual monitoring fee (1c below) for each pollutant measured by a District-approved continuous emission monitor or a District-approved parametric emission monitoring system.

c. MFR/SYNTHETIC MINOR MONITORING FEE .....$10,690 per monitor per pollutant

2. SYNTHETIC MINOR APPLICATION FEES

Each facility that applies for a synthetic minor operating permit or a revision to a synthetic minor operating permit shall pay application fees according to 2a and either 2b (for each source holding a District Permit to Operate) or 2c (for each source affected by the revision). If a major facility applies for a synthetic minor operating permit prior to the date on which it would become subject to the annual major facility review fee described above, the facility shall pay, in addition to the application fee, the equivalent of one year of annual fees for each source holding a District Permit to Operate.

a. SYNTHETIC MINOR FILING FEE ..... $1,489 per application

b. SYNTHETIC MINOR INITIAL PERMIT FEE..... $1,070 per source

c. SYNTHETIC MINOR REVISION FEE..... $1,070 per source modified

3. MFR APPLICATION FEES

Each facility that applies for or is required to undergo: an initial MFR permit, an amendment to an MFR permit, a minor or significant revision to an MFR permit, a reopening of an MFR permit or a renewal of an MFR permit shall pay, with the application and in addition to any other fees required by this regulation, the MFR filing fee and any applicable fees listed in 3b-h below. The fees in 3b apply to each source in the initial permit. The fees in 3g apply to each source in the renewal permit, The fees in 3d-f apply to each source affected by the revision or reopening.

a. MFR FILING FEE ..... $1,489 per application

b. MFR INITIAL PERMIT FEE..... $1,489 per source

c. MFR ADMINISTRATIVE AMENDMENT FEE..... $421 per application

d. MFR MINOR REVISION FEE ..... $2,114 per source modified

e. MFR SIGNIFICANT REVISION FEE ..... $3,941 per source modified

f. MFR REOPENING FEE..... $1,293 per source modified

g. MFR RENEWAL FEE..... $628 per source

Each facility that requests a permit shield or a revision to a permit shield under the provisions of Regulation 2, Rule 6 shall pay the following fee for each source (or group of sources, if the requirements for these sources are grouped together in a single table in the MFR permit) that is covered by the requested shield. This fee shall be paid in addition to any other applicable fees.

h. MFR PERMIT SHIELD FEE..... $2,226 per shielded source or group of sources

4. MFR PUBLIC NOTICE FEES

Each facility that is required to undergo a public notice related to any permit action pursuant to Regulation 2-6 shall pay the following fee upon receipt of a District invoice.

MFR PUBLIC NOTICE FEE ..... Cost of Publication

5. MFR PUBLIC HEARING FEES

If a public hearing is required for any MFR permit action, the facility shall pay the following fees upon receipt of a District invoice.

a. MFR PUBLIC HEARING FEE ..... Cost of Public Hearing not to exceed $18,192

b. NOTICE OF PUBLIC HEARING FEE ..... Cost of distributing Notice of Public Hearing

6. POTENTIAL TO EMIT DEMONSTRATION FEE

Each facility that makes a potential to emit demonstration under Regulation 2-6-312 in order to avoid the requirement for an MFR permit shall pay the following fee:

a. PTE DEMONSTRATION FEE..... $254 per source, not to exceed $25,008

(Amended 6/15/94, 10/8/97, 7/1/98, 5/19/99, 6/7/00, 6/6/01, 5/1/02, 5/21/03, 6/2/04, 6/15/05, 6/7/06, 5/2/07, 5/21/08, 5/20/09, 6/16/10, 5/4/11, 6/6/12, 6/19/13, 6/4/14, 6/3/15, 6/15/16, 6/21/17, 6/6/18, 6/5/19, 6/16/21, 6/15/22)

Appendix I. Fee Guidances

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MAR 27 2018

MEMORANDUM

SUBJECT: Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70

FROM: Peter Tsirigotis
Director

TO: Regional Air Division Directors, Regions 1 – 10

The attached guidance is being issued in response to the Environmental Protection Agency Office of Inspector General's (OIG) 2014 report regarding the importance of enhanced EPA oversight of state, local, and tribal[1] fee practices under title V of the Clean Air Act (CAA).[2] Specifically, this guidance reflects the EPA's August 22, 2014, commitment to the OIG in response to the OIG's Recommendations 2 through 8 to "issue a guidance document that sets forth a fee oversight strategy" (we refer to the attached guidance as the "**title V evaluation guidance**"). The EPA's response to the OIG's other recommendation is being issued concurrently in a separate memorandum and guidance concerning the EPA's review of fee schedules for title V programs ("updated fee schedule guidance").[3]

The title V evaluation guidance is consistent with EPA principles and best practices for efficient and effective oversight of state permitting programs[4] and applies those principles and best practices to the specific context of title V program and fee evaluations under part 70 of the CAA. As a result, this guidance highlights opportunities for communication and collaboration between the EPA and air agencies throughout the evaluation process. Principles and best practices are discussed in Section I of the attached title V evaluation guidance.

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[1] As used herein, the term "air agency" refers to state, local, and tribal agencies.
[2] *Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air Act Title V Revenues*; U.S. EPA Office of the Inspector General, Report No. 15-P-0006, October 20, 2014 ("OIG Report").
[3] *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsirigotis, Director, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018 ("updated fee schedule guidance"). See the EPA's title V guidance website at *https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index*.
[4] *See Promoting Environmental Program Health and Integrity: Principles and Best Practices for Oversight of State Permitting Programs* (August 30, 2016).

Example best practices for conducting part 70 fee or program evaluations described in the guidance, as well as other existing guidance documents relevant to title V evaluations, include:

Example Best Practices:

- The frequency and timing of program and fee evaluations are defined in the Office of Air and Radiation's National Program Manager Guidance (NPM guidance), which is issued for a 2-year period.[5] *See* Section III of the title V evaluation guidance.
- The EPA will post final evaluation reports on publicly accessible websites established for this purpose. *See* Section III.D of the title V evaluation guidance.
- A best practice for resolving concerns that arise during or after an evaluation is to use collaborative approaches, such as face-to-face meetings between the air agency and the EPA when possible, and preferably prior to taking formal approaches provided for in the part 70 regulations. *See* Section III.E of the title V evaluation guidance.

Other Available Guidance:

- EPA guidance on the sufficiency of fees and other fee requirements of part 70 for permitting programs, including guidance on certain requirements related to fee demonstrations. *See* Section IV of the title V evaluation guidance.
- EPA guidance on governmental accounting standards tailored to the part 70 program, including an example method for calculating annual fees, costs, and the "presumptive minimum" fee amount; types of revenue that may be counted as "fees"; clarification on the definition of "direct costs," "other direct costs," and "indirect costs"; and a review of methods for determining indirect costs. *See* list of EPA guidance on part 70 fee requirements in Attachment B of the title V evaluation guidance.

Finally, the title V evaluation guidance contains several attachments:

- Attachment A is a checklist that may be used by the EPA to help plan for a particular program or fee evaluation using a step-by-step approach with suggested timeframes for completing each step, including a timeframe for the issuance of the final evaluation report.
- Attachment B is a list of reference documents and other resources that may be useful as background information for reviewing issues that may arise during a program or fee evaluation.
- Attachment C provides an example annual financial data reporting form. It may be used as a tool to collect information to track an air agency's compliance with certain part 70 fee requirements. The form may be used to track information on fee revenue, program costs, and the presumptive minimum fee amount for a particular air agency. The example form also includes helpful explanations of common accounting terms referenced in part 70.

The EPA is also working to increase and improve internal collaboration, communication, expertise, and the sharing of information between the EPA staff working on title V evaluations. For example, as a best practice, the EPA plans to establish an internal system to facilitate staff input on and sharing of evaluation tools and evaluation reports.

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[5] *See Final FY 2017 OAR National Program Manager Guidance Addendum*, U.S. EPA, Publication Number 440B16001 (May 6, 2016) (NPM guidance) located at *https://www.epa.gov/sites/production/files/2016-05/documents/fy17-oar-npm-guidance-addendum.pdf*.

The development of this guidance included outreach and discussions with stakeholders, including the EPA Regions, the National Association of Clean Air Agencies, and the Association of Air Pollution Control Agencies.

If you have any questions concerning the title V evaluation guidance, please contact Juan Santiago, Associate Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, at (919) 541-1084 or *santiago.juan@epa.gov*.

Attachments
1. Program and Fee Evaluation Strategy Guidance for 40 CFR Part 70 ("title V evaluation guidance")
2. Attachment A – Evaluation Checklist for 40 CFR Part 70
3. Attachment B – Resources
4. Attachment C – Example Annual Financial Data Form for 40 CFR Part 70

DISCLAIMER

These documents explain the requirements of the EPA's regulations, describe the EPA's policies, and recommend procedures for sources and permitting authorities to use to ensure that program evaluations and fee evaluations 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's 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's regulations, but the documents do not establish legally binding requirements in and of themselves.

Program and Fee Evaluation Strategy Guidance for 40 CFR Part 70

I. Principles and Best Practices for EPA Oversight of Permitting Programs

As part of the EPA's ongoing efforts to strengthen partnerships with state, local, and tribal agencies (referred to here as, "air agencies"), in 2016, the EPA established common principles and best practices for oversight of state permitting programs for air, water, and solid waste. *See Promoting Environmental Program Health and Integrity: Principles and Best Practices for Oversight of State Permitting Programs,* August 30, 2016.[1] The principles and best practices are intended to promote efficient and effective oversight that optimizes both collaboration and accountability in support of program health and integrity.

The title V evaluation guidance aligns with these principles and best practices and will consider them in title V evaluations of local and tribal air permitting programs as well as state programs. For example, this guidance provides for air agency evaluations that will be accomplished through clear, accurate, and up-to-date guidance, including guidance on evaluations and fee requirements for air agencies; routine review of air agency programs to identify and implement program improvements; requirements for yearly program evaluations on timeframes established in the Office of Air and Radiation's National Program Manager Guidance (NPM guidance);[2] the use of tools, including checklists, for planning and tracking the timely completion of evaluations; opportunities for collaboration between the EPA and air agencies throughout the evaluation process; and electronic posting of final evaluation reports.

II. Summary of Title V Requirements for Air Agencies

A. General Program Requirements

Title V of the Clean Air Act (CAA or Act) of 1990 establishes an operating permit program for major sources of air pollutants, as well as some other sources.[3] The EPA promulgated regulations under 40 CFR part 70 (part 70), consistent with title V of the Act, to establish the minimum elements for operating permit programs to be administered by permitting authorities.

Air agencies with approved permit programs under part 70 must comply with minimum permit program requirements, such as reviewing application forms, adhering to certain permit processing procedures (including timeframes), ensuring certain permit content, collecting fees sufficient to fund the program, providing for public participation and EPA review of individual

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[1] The report is located at *https://www.epa.gov/sites/production/files/2016-10/documents/principles_and_best_practices_for_oversight_of_state_permitting_programs.pdf.*

[2] The latest NPM guidance is for FY 2018 and FY 2019: *Final FY 2018 - 2019 OAR National Program Manager Guidance*, U.S. EPA, Publication Number 440P17002 (September 29, 2017) (NPM guidance) located at *https://www.epa.gov/sites/production/files/2017-09/documents/fy18-19-oar-npm-guidance.pdf.* The most recent NPM guidance should be consulted for specific program requirements and timeframes.

[3] *See* CAA §§ 501-507; 42 U.S.C. §§ 7661-7661f.

permits, and supplementing permits with compliance provisions (when needed), among other requirements.[4]

B. Summary of Title V Fee Requirements

The EPA is issuing a separate memorandum and updated fee schedule guidance on the activities that constitute title V permit program costs and must, therefore, be funded by permit fees. The requirements for air agency fee programs are further discussed in Section I of the updated fee schedule guidance.[5] This title V evaluation guidance identifies best practices and guidance on EPA oversight of air agency fee programs, particularly through program and fee evaluations. Attachment B of the title V evaluation guidance provides a list of all previously issued EPA guidance on part 70 fee requirements. The following is a summary of the fee requirements that will guide the EPA reviews of air agency programs:[6]

- Permit fees must be paid by "part 70 sources,"[7] and the permit fees must cover all "reasonable (direct and indirect) costs" of the permit program.[8] If the permit fees at least cover the total permit program costs, the fees are deemed to be sufficient.

- Permit fees paid by "part 70 sources" are "exchange revenue" or "earned revenue" in governmental accounting terminology because a good or service (e.g., a permit) is exchanged by a governmental entity for a price (e.g., a permit fee).[9] Only revenue classified as "exchange revenue" should be compared to costs to determine the overall financial results of operations for a period.[10] This means that no legislative appropriations, taxes, grants,[11] fines and penalties, which are generally characterized as

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[4] *See* 40 CFR §§ 70.1(a) and 70.4.

[5] *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsirigotis, Director, OAQPS, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018 (updated fee schedule guidance).

[6] *See* the updated fee schedule guidance at Section I. General Principles for Review of Title V Fee Schedules.

[7] The term "part 70 sources" is defined in 40 CFR §t70.2 to mean "any source subject to the permitting requirements of this part, as provided in 40 CFR §§ 70.3(a) and 70.3(b) of this part."

[8] *See* CAA section 502(b)(3)(A); 40 CFR § 70.9(a).

[9] *See* Statement of Recommended Accounting Standards Number 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, issued by the Federal Accounting Standards Advisory Board (FASAB) ("FASAB No. 7") at page 2 and *see* Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998), issued by the Governmental Accounting Standards Board (GASB) at pages 1-4.

[10] *See* FASAB No. 7 at page 8. For example, see Governmental Accounting Standards Series, Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998), issued by GASB, and Statement of Recommended Accounting Standards Number 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, issued by FASAB.

[11] Since part 70 fees are "program income" under 40 CFR § 31.25(a), part 70 fees cannot be used as match for section 105 grants, and no state may count the same activity for both grant and part 70 fee purposes. *See* an October 22, 1993, memo (and several other memos) on this subject, listed in Attachment B of this document.

"non-exchange revenue,"[12] should be compared to program costs to determine if permit fees are sufficient to cover costs.

- Any fee required by part 70 must "be used solely for permit program costs"—in other words, required permit fees may not be diverted for non-part 70 purposes.[13,14] Nothing in part 70 restricts air agencies from collecting additional fees beyond the minimum amount needed to cover part 70 program cost; however, all fees (including surplus) must be used for part 70 purposes.

- During permit program implementation, the EPA may require "periodic updates" of the "initial accounting" portion of the "fee demonstration" to show whether fee revenue required by part 70 is used solely to cover the costs of the permit program.[15]

- During program implementation, the EPA may also require a "detailed accounting" to show that the fee schedule is adequate to cover costs when an air agency changes its fee schedule to collect *less than* the "presumptive minimum"[16] or if the EPA determines, based on comments rebutting a presumption of fee sufficiency or on the EPA's own initiative, that there are serious questions regarding whether the fee schedule is sufficient to cover the permit program costs.[17]

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[12] "Nonexchange revenue" arises primarily from the exercise of governmental power to demand payment from the public (e.g., income tax, sales tax, property taxes, fines, and penalties) and when a government gives value directly without directly receiving equal value in return (e.g., legislative appropriations and intergovernmental grants).

[13] Part 70 purposes are all activities in a permit program that must be funded by part 70 fees. As the EPA has previously explained in the EPA's November 1993 memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance ("fee demonstration guidance")*, the types of activities included in a permit program to be funded by permit fees, and the costs of those activities will differ depending on many factors associated with the particular permitting authority. These include the number and complexity of sources within the area covered by the program; how often the permitting authority reviews permits (e.g., some permitting authorities may renew permits every year instead of every 5 years); the universe of sources covered (i.e., some permitting authorities may not opt to defer permitting for non-major sources); the experience of the permitting authority with permitting (e.g., agencies with permitting experience may not need as extensive training programs as those with no operating permit experience); and many other factors. Each permitting authority will have to determine its own permitting effort and what activities are directly or indirectly concerned with operating permits.

[14] *See* 40 CFR § 70.9(a).

[15] *See* fee demonstration requirements at 40 CFR §§ 70.9(c) and 70.9(d) and *see* the EPA's November 1993 memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance ("fee demonstration guidance")*, on preparing fee demonstrations for the initial part 70 program submittal.

[16] A fee schedule that would result in fees above the "presumptive minimum" is considered to be "presumptively adequate." The "presumptive minimum" is generally defined to be "an amount *not less than* $25 per year [adjusted for increases in the Consumer Price Index] times the total tons of the actual emissions of each "regulated air pollutant (for presumptive fee calculation)" emitted from part 70 sources." Note that the calculation of the "presumptive minimum" also excludes certain emissions and adds a "GHG cost adjustment." See 40 CFR 70.9(b)(2)(i) through (v).

[17] *See* 40 CFR § 70.9(b)(5) and Section 2.0 of the fee demonstration guidance for an example "detailed accounting." The scope and content of a "detailed accounting" may vary but will generally involve information on program fees and costs and accounting procedures and practices that will show how the air agency's fee schedule will be sufficient to cover all program costs.

III.i Best Practices for EPA Evaluation of Part 70 Programsi

This section includes an overview of title V program and fee evaluations and describes the EPA's recommended best practices for conducting program and fee evaluations. This includes a general process and recommended steps for conducting such evaluations, including a timeframe for completion of final evaluation reports. This section also includes recommendations for activities that may occur after a final evaluation report is issued, including for resolution of concerns raised during an evaluation process, and for public posting of final evaluation reports.

A.i Overview of Part 70iProgram and Fee Evaluationsi

In its oversight capacity, the EPA periodically evaluates parta70 programs to ensure that they are being implemented and enforced inaccordance with the requirements of title V and part 70. Program and fee evaluations help the EPA pinpoint areas for program improvement, determine if previously suggested areasaof improvement have been addressed by the air agency, and identify bestapracticesahataean be shared with other air agencies and the EPA Regions to promote program health and integrity.

The frequency and timeframes for conducting part 70 evaluations are documented inahe NPM guidance.[18] aTheafrequency and timeframe for a specific evaluation should be consistent with the NPM guidance for the period in which the evaluation occurs.[19] The current NPM guidance requires each EPA Region to complete oneapart 70 evaluation each year. This means that final evaluation reports should be issued within a 1-year timeframe.[20] It may be possible for the EPA to complete some evaluations onea shorter timeframe than specified by the NPM guidance when the scope ofaan air agency evaluation is tailored to someaelement of theaprogram, based on previous performance, as evidenced by previous evaluations. Looking for these opportunities and completing evaluation reports in less than a year is encouraged as a best practice.a

Program evaluationsaean be conducted on any particular element or elements of theapart 70 program, including the complete program, or theair agency's implementation (including fee reviews), enforcement, and legal authority for the program.

As a best practice, the EPA Regions should reviewaprevious evaluation results that may help inform and tailor the appropriate scope of an upcoming evaluation and may give particular focus to issues that have previously been identified as problematic. In addition, the EPA Regions should be aware of any recent statutory or regulatory changes (including to federal or state rules) and may want to focus part of the evaluation on these newer implementation areas.

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[18] The final FY 2018 – 2019 NPM guidance includes a goal for the EPA Regions to perform an evaluation for at least one permitting authority for each EPA Region per year. The Regional goals in the guidance are reviewed periodically and may change in the future.

[19] The NPM guidance is currently revised on a 2-year cycle. The current guidance is effective for fiscal years 2018 and 2019.

[20] The EPA notes that program or fee evaluations are not currently required to begin on the first day of the fiscal year; thus, an evaluation may start during one fiscal year and end during the next fiscal year.

To ensure that permitting authorities have adequate resources to implement their part 70 programs, another best practice is to conduct a fee evaluation as part of the overall program evaluation. The content and scope of a fee evaluation may be specific to the air agency being evaluated, but frequent topics include those identified in Sections II.B and IV of this title V evaluation guidance.

B. Preparing for Title V Evaluations

Developing an evaluation checklist and an evaluation questionnaire can help expedite the program review process and is considered a best practice for the EPA Regions in preparing for a part 70 program evaluation. An example evaluation checklist, to plan for and track the progress of a particular evaluation, is provided in Attachment A. An evaluation checklist provides a framework of specific topics to be evaluated and recommended steps leading to issuance of a final evaluation report, including a timeline based on the 1-year timeframe of the current NPM guidance. Note that the timeframes for the individual steps in the example checklist are flexible, provided the 1-year overall timeframe is met. Another recommended best practice is to share the checklist with the air agency prior to the actual evaluation to assist them in preparing for the evaluation.

An evaluation questionnaire is another tool that the EPA Regions may prepare in advance of an evaluation. Typically, an evaluation questionnaire is a compilation of specific questions intended to gather information and data from an air agency to assist the EPA in its evaluation of a particular part 70 program. As a best practice, the EPA Regions should share draft questionnaires with other EPA Regions or Headquarters offices to seek input and share "lessons learned" prior to transmitting to the air agency. Collaboration can enhance national consistency and help the Regional office learn from the experiences of other Headquarters offices.

C. Information and Data Gathering Phase

An important initial step of any program or fee evaluation is gathering information about current program implementation. Typically, an evaluation formally begins when the EPA Region sends a letter to the air agency informing the agency of the EPA's intent to conduct an evaluation, with a request for specific information and data needed to conduct the evaluation. Usually such a letter will be preceded by an informal call or email to provide the air agency with notice of the evaluation. The letter should specify the scope of the evaluation and a timeline for when a response from the air agency is expected. As a best practice, if the EPA Region intends to use an evaluation questionnaire, that questionnaire should be included with the letter.

The next recommended step is for the air agency to respond in writing to the EPA's questions and provide the information or data that was requested. The length of time to complete this step is dependent on the scope of the evaluation and the air agency's data collection systems. If the air agency foresees an issue with providing the information requested in a timely manner, it should reach out to the EPA Region to discuss steps to address the issue and reach consensus on a revised timeline.

If resources allow, the EPA Region should, as a best practice, conduct an in-person meeting with the air agency shortly after sending the letter (and questionnaire if one is to be used) to answer

preliminary questions on timing and scope. In addition, the EPA Region and the air agency could hold a follow-up meeting to discuss the air agency's draft response. In preparing for these meetings, the EPA staff should make every effort to gather as much relevant information as possible before meeting with the air agency in order to make the best use of time.

In addition to the evaluation questionnaire, another method for collecting information or data for an evaluation includes file and permit reviews. File reviews may also be used by the EPA to evaluate the effective implementation of certain program responsibilities (e.g., to quality assure fee collection procedures). The EPA may use a permit review (reviewing a sample of issued permits) to evaluate whether the air agency is satisfying permit-content requirements and permit-issuance procedures in practice.[21]

D. Evaluation Report Phase

The EPA staff should document each title V evaluation in an evaluation report. The report may describe concerns identified during the evaluation and, if any concerns are identified, may include recommended corrective actions with intended timeframes for resolution. The EPA may also ask the air agency to provide an explanation of how it will resolve these concerns and an estimate of the timeframe needed for the air agency to complete its work.

The EPA staff drafting the evaluation report should consult with Regional management or Headquarters offices as needed, particularly if the report addresses nationally significant issues. Once completed, the draft evaluation report's findings and recommendations, including those addressing novel or controversial issues, should be shared with EPA management and other offices.

As a best practice, the EPA should provide the draft report to the air agency with an option to provide comments back to the EPA. During this time, the EPA and the air agency may also choose to have further discussions of the draft report findings. If further discussion occurs, additional time may be necessary to complete the final report and corrective action plan.

After attaching any air agency comments to the report and revising the report to incorporate input from EPA management and the air agency being evaluated, the final report should be signed by the relevant EPA air program manager or other designated EPA official. The final report should then be transmitted to the air agency and an electronic copy should be posted on a publicly accessible website maintained by the EPA (the Regional websites are linked to the national webpage for the part 70 program).[22] As a best practice, any supporting information related to the evaluation should be posted on the EPA website with the final report, including the air agency's response to the questionnaire, relevant communications, and other supporting data. Approaches used to address novel or controversial issues should be summarized and shared for potential use in future reviews.

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[21] *See* 40 CFR §§ 70.6 and 70.7.

[22] *See https://www.epa.gov/title-v-operating-permits/epa-oversight-operating-permits-program.*

E. Post-Report Activities

Activities that occur after the EPA transmits the final evaluation report are not included in the 1-year timeframe for completing the evaluation process pursuant to the NPM guidance. Subsequent activities will proceed on a separate track under different timeframes.

The EPA may provide an opportunity for the air agency to respond in writing to the final evaluation report, particularly in cases where the EPA identified concerns but a corrective action plan was not agreed upon during the preparation of the final report. This step is not necessarily part of the evaluation process and may proceed on a separate track. The EPA would not expect such responses to necessarily be part of the final report, particularly in cases where the responses occur after the final report has been transmitted to the air agency. However, these post-report responses may be included as supporting information on the website, along with the final report.

The EPA encourages its staff to, where possible, conduct in-person meetings with their air agency counterparts in order to best facilitate resolution of any issues identified in the report. Depending on the complexity of the issue, such face-to-face meetings may be facilitated by the involvement of a third-party negotiator or other EPA offices (e.g., the Office of the Chief Financial Officer) as appropriate. Such meetings may prove useful to resolve straight forward issues that can be expeditiously resolved (e.g., permit administration or implementation issues that do not require regulatory changes), as well as to discuss long-term plans for resolving more complex issues (e.g., where resolution may involve changes to statutory authority, regulatory changes, or a multi-step process that may take multiple years to complete). In cases where initial discussions between the EPA and air agency staff do not result in a plan to resolve issues, a best practice is to elevate the issue to the management level (e.g., EPA and air agency management).

Finally, if the issue resolution process described above fails to resolve the issues identified during a program or fee evaluation, the EPA has the authority to consider whether an official EPA finding of a program deficiency is warranted.[23] The decision to make such a finding should be coordinated with EPA management at the Regional and Headquarter level. Section 502(i) of the Act provides that whenever the EPA Administrator determines that an air agency is not adequately administering or enforcing a title V program, or any portion of a title V program, the EPA shall provide notice to the air agency and may take certain measures intended to incentivize compliance. In practice, the EPA refers to the determination as a "finding," the inadequate administration or implementation as a "deficiency," and the notice as a "Notice of Deficiency" (NOD).[24] The EPA will use its best judgment to decide when a finding of a program deficiency is warranted; whenever such a finding is made, the EPA will issue an NOD and follow the requirements that flow from that finding.

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[23] *See* 40 CFR §§ 70.10(b) and 70.4(i)(1).
[24] NODs are published in the *Federal Register*.

IV. Assessment of Fee Sufficiency and Other Fee Requirements

This section discusses the requirement for part 70 permit fees to be sufficient to cover program costs, including requirements for updates to certain elements of part 70 fee demonstrations, including for "periodic updates" to the "initial accounting" and for a "detailed accounting" in certain circumstances. This section also discusses Attachment C, which is an example annual financial data reporting form that may be used to report fee revenue, program costs, and to calculate the "presumptive minimum" for an air agency for a particular year.

Fee sufficiency.aThe part 70 rule uses the term "sufficient" in relation to fees and costs.[25] Since the question of whether fees are sufficient is a key concern that may be considered by the EPA as part of a program or fee evaluation, further explanation may be helpful:

- Section 502(b)(3)(A) of the Act requires permit programs to fund all "reasonable (direct and indirect) costs" of the permit programs through permit fees collected from sources. Similarly, part 70 requires the fees to be paid by "part 70 sources,"[26] requires the fees to be sufficient to cover all reasonable permit program costs, and requires the fees to be used "solely" for permit program costs.[27]

- The costs against which fees are compared must include, at a minimum, certain activities required by the part 70 rules[28] and all "reasonable (direct and indirect) costs."[29] Additional discussion on the revenue and costs that should be used in this comparison is provided in the separate updated fee schedule guidance as well as Section II.B of this title V evaluation guidance.

- If concerns regarding fee sufficiency are raised by the EPA, the EPA will typically follow the issue resolution procedures discussed in Section III.E of this title V evaluation guidance.

Initial fee demonstration. As part of the initial part 70 program submittal to the EPA, air agencies are required to provide a "fee demonstration" to show that the fee schedules selected by the air agencies would result in the collection and retention of fees in an amount sufficient to meet the fee requirements of part 70.[30] The contents of the "fee demonstration" vary depending on the status of the air agency with respect to the "presumptive minimum":

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[25] *See* 40 CFR §§ 70.9(a), (b) and (c).
[26] The term "part 70 sources" is defined in 40 CFR § 70.2 to mean "any source subject to the permitting requirements of this part, as provided in 40 CFR §§ 70.3(a) and 70.3(b) of this part." Thus, a source is a part 70 source prior to obtaining a part 70 permit if the source is subject to permitting under the applicability provisions of 40 CFR § 70.3.
[27] *See* 40 CFR § 70.9(a).
[28] *See* 40 CFR § 70.9(b)(1).
[29] CAA section 502(b)(3)(A).
[30] *See* the fee demonstration requirements at 40 CFR §§ 70.9(c) and 70.9(d) and the EPA's November 1993 memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance ("fee demonstration guidance")*, on preparing fee demonstrations for the initial part 70 program submittal. *See* 40 CFR § 70.9(c), (d).

- Air agencies with fee schedules that would result in fees above the "presumptive minimum" are required to submit a "presumptive minimum program cost" demonstration showing that the expected fee revenue would in fact be above the "presumptive minimum"[31] and also provide an "initial accounting"[32] to show that fees would be used solely to cover part 70 program costs.

- Air agencies with fee schedules that would result in fees below the "presumptive minimum" are required to submit a "detailed accounting"[33] showing that the expected fee revenue would still be sufficient to cover part 70 program costs and an "initial accounting"[34] to show that the required fees would be used solely to cover part 70 program costs.

Also, as part of the initial program submittal, part 70 requires the submittal of several additional elements with respect to program costs.[35]

Detailed accounting. After program approval, a "detailed accounting" that permit fees are collected and retained in an amount sufficient to cover all reasonable direct and indirect costs is required in the following two circumstances:[36]

- When an air agency sets a fee schedule that would result in an amount less than the "presumptive minimum,"[37] or

- When the EPA determines—based on comments rebutting the presumption or its own initiative—that there are serious questions regarding whether the fee schedule is sufficient to cover costs.

A "detailed accounting" for an approved part 70 program would be based on data on fee revenue and program costs. The level of detail required in the "detailed accounting" remains at the discretion of the EPA and will depend on circumstance-specific factors related to the air agency being evaluated.[38]

Periodic updates. After program approval, the EPA may require "periodic updates"[39] to the "initial accounting" element of the fee demonstration to confirm that required fees are being used solely to cover part 70 costs. A "periodic update" for an approved part 70 program is based on

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[31] This fee demonstration is referred to as the "presumptive minimum program cost" demonstration in Sections 1.1 and 3.2 of the EPA's November 1, 1993, memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance ("fee demonstration guidance")*.

[32] *See* 40 CFR § 70.9(d).

[33] *See* 40 CFR § 70.9(b)(5) and an example "detailed accounting" in Section 2.0 of the fee demonstration guidance.

[34] *See*, e.g., 40 CFR § 70.4(b)(8)(v).

[35] *See* 40 CFR § 70.9(d).

[36] *See* the "detailed accounting" requirements at 40 CFR § 70.9(b)(5)(1).

[37] The calculation of the "presumptive minimum" is provided in 40 CFR §§ 70.9(b)(2)(i) through (v).

[38] *See* the fee demonstration guidance, Section 2.0, for an example "detailed accounting."

[39] *See* the "periodic update" provision at 40 CFR § 70.9(d).

records showing that required fee revenue is actually being retained and used to cover the reasonable direct and indirect costs of the part 70 program.

Example annual financial reporting form. Attachment C of this title V evaluation guidance is an example annual financial reporting form for part 70. This tool may be used to help track the collection of fee revenue, program costs, and the presumptive minimum fee amount for a particular air agency. Attachment C also includes helpful explanations of common accounting terms used for part 70 purposes. This example annual financial reporting form represents one way to collect the information previously described and is not required by part 70 for any particular oversight activity.

V.i Identification of Financial and Accounting Expertise for Fee Reviews

The OIG Report requested that the EPA explain how to leverage financial or accounting expertise to assist with fee evaluations. Historically, the EPA staff with scientific, engineering, or similar technical degrees or experience are tasked with air agency program and fee evaluations.

A recommended best practice is to seek the assistance of existing EPA staff with governmental accounting, financial, or economics expertise, who work outside of the part 70 program (e.g., staff involved in grants administration or in determining the economic penalty of noncompliance for civil penalty assessment) to assist with fee evaluations as needed. One way for the EPA to seek internal assistance for fee evaluations would be to offer a formal detail opportunity (a temporary reassignment for a set period of time) for a financial or accounting professional to work on part 70 evaluations. Another way to seek internal EPA assistance would be to use the EPA's Skills Marketplace.[40]

EPA staff without financial or accounting expertise who want to become familiar with state, local, or tribal financial and accounting standards and practices may consider reviewing governmental accounting guidance issued by the national accounting standards board (e.g., the Governmental Accounting Standards Board (GASB)) and financial or audit reports generated by the air agency. Financial or accounting audit reports generated by the air agency may also provide useful data, address emerging issues with the part 70 program, or confirm that known fee issues are being addressed.

Financial or accounting guidance. The primary focus of part 70 fee evaluations is to review whether the air agency's fee program is being implemented consistent with part 70 requirements (*see* Section II of this guidance, *Summary of Title V Requirements for Air Agencies*). The focus of fee evaluations under part 70 is different from the focus of typical financial or accounting "audits" (as that term is used in the accounting profession).[41] Attachment B of this guidance

[40] The Skills Marketplace is a component of the EPA's recently launched Talent Hub Portal SharePoint site located at: *https://usepa.sharepoint.com/sites/OA_Applications/TalentHub/smp/SitePages/Home.aspx.*

[41] In the accounting profession, the primary purpose of an audit is to verify that financial statements of governmental or private entities are consistent with specific accounting criteria.

includes several examples of governmental accounting or financial guidance and other resources that may be useful for technical staff to build expertise in these areas.

Financial or accounting audit reports generated by air agencies. Audit reports or financial reports prepared by air agencies for their own accounting, budgeting, or oversight purposes may include useful background information for fee evaluations, including caseload statistics, historical funding patterns, funding sources, and identification of program performance issues. The GASB requires air agencies to prepare annual financial reports to determine compliance with their budgetary requirements or finance-related requirements. Most air agencies follow these requirements through review of financial reports by an auditor, with preparation of the reports by the air agency budget office, legislature, or by the department itself. Most air agencies also require local programs to be audited for submittal to the state auditor. These financial audits are typically conducted at the departmental level, but part 70 data may be available upon request. Such reports are not required by the EPA, but, if available and timely, they may provide useful information for program or fee evaluations.

ATTACHMENT A

Evaluation Checklist for 40 CFR Part 70

Regardless of the type of evaluation being conducted (program, fee, or combination of the two), the EPA describes the evaluation process as consisting of two phases: 1) Information and Data Gathering Phase and 2) Evaluation Report Phase, each of which is composed of several recommended steps. The requirement of the EPA's national program manager guidance ("NPM guidance) for fiscal years 2018 and 2019 is for part 70 evaluations to be completed within 1 year.[1] The checklists in Tables 1 and 2 describe the phases, recommended steps, and timeframesa for each phase and step, leading to completion of the evaluation process within the 1-year timeframe.

The EPA Regions may revise this checklist to meet their needs. For example, the column for recommended duration could be replaced with expected dates for completion of each step for planning purposes, and steps that do not apply for a specific evaluation could be deleted. The column for comments could be used to document reasons why expected timeframes were not met or other relevant information concerning implementation of a step.

Information and Data Gathering Phase

An EPA letter requesting certain information from the air agency, and the air agency's response is the first phase of the evaluation process. The recommended best practice for this phase is that it takes no longer than 160 days. Recommended steps and durations for the steps are listed in Table 1.

Evaluation Report Phase

Drafting and finalization of the evaluation report is the second phase of the evaluation process. The recommended timeframe for this phase is 205 days. Specific steps and a recommended duration for each step are listed in Table 2.

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[1] *Final FY 2018 - 2019 OAR National Program Manager Guidance*, U.S. EPA, Publication Number 440P17002 (September 29, 2017) (NPM guidance) located at *https://www.epa.gov/sites/production/files/2017-09/documents/fy18-19-oar-npm-guidance.pdf*.

Table 1: Information and Data Gathering Phase Checklist
(It is recommended that this phase take no more than 160 days.)

Description	Recommended Duration	Checklist	Comments
The Region drafts a checklist and sends an information request letter to the state, local or tribal agency ("air agency").	No longer than 40 days.	□ Start drafting letter and checklist: ___/___/_____ □ Letter transmitted: ___/___/_____	
Air agency responds to questions in writing.	No longer than 120 days.[†] This phase should be completed within 80 days of project initiation.	□ Air agency response received: ___/___/_____	

[†] The scope of the evaluation and sophistication of the data collection systems employed by the air agency will inform the time needed for this step.

Table 2: Program and/or Fee Evaluation Report Phase Checklist
(It is recommended that this phase take no more than 205 days.)

Description	Recommended Duration	Checklist	Comments
The Region reviews the air agency response and drafts evaluation report. EPA HQ consultation as needed.	No longer than 60 days.	□ Regional review of air agency response □ Consultation with HQ (as needed) Date step completed: ___/___/_____	
The EPA and the air agency meet to discuss results (optional).	No longer than 30 days after draft report available.	□ EPA & air agency meeting to discuss results: ___/___/_____	
EPA Regional management briefed on draft report; copy provided to air agency for comment (optional).	No longer than 50 days.††	□ EPA management briefing: ___/___/_____ □ Draft report sent for comment: ___/___/_____	
Air agency responds to draft report with comments (optional).	No more than 30 days.	□ Air agency response received: ___/___/_____	
The EPA releases final version of evaluation report.	No more than 35 days.‡	□ Final evaluation report released: ___/___/_____	

†† If an air agency will not be providing comments on the report, the EPA Region could issue the final report by the end of this step or 140 days.
‡ Some air agencies may request that the EPA also release the air agency's response with the release of the final evaluation report. The EPA recommends that Regions include such responses in their final reports, when practicable.

ATTACHMENT B

Resources

This is a list of resources where users can find additional information related to the requirements and issues discussed in this document.

Part 70 Monitoring Requirements

- Source Monitoring Guidance:
  - Monitoring Knowledge Base: *http://cfpub.epa.gov/oarweb/mkb/.*
  - Compliance Assurance Monitoring: *http://www3.epa.gov/ttn/atw/cam/ricam.html.*
  - Emissions Measurement Center: *http://www3.epa.gov/ttn/emc/.*
- Preconstruction Review:
  - For EPA resources concerning preconstruction review permitting, *see http://www2.epa.gov/nsr.*
  - For EPA guidance memos on preconstruction review, *see https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index.*

EPA Responses to Part 70 Petitions (EPA Orders)

- *See* EPA responses and petitions at *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

Greenhouse Gas Permitting Requirements

- October 23, 2015 Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, Final Rule: *https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf.*

Guidance on Government Accounting Standards

- Handbook of Federal Accounting Standards and Other Pronouncements, as Amended, as of June 30, 2015, Federal Accounting Standards Advisory Board (FASAB Handbook): *http://www.fasab.gov/pdffiles/2015_fasab_handbook.pdf*:
  - Statement of Federal Financial Accounting Standards 4: *Managerial Cost Accounting Standards and Concepts*, page 396 of the FASAB Handbook (June 2015) ("SFFAS No. 4").
  - Statement of Federal Financial Accounting Standards 7: *Accounting for Revenue and Other Financial Sources and Concepts for Reconciling Budgetary and Financial Accounting*, page 592 of the FASAB Handbook (June 2015) ("SFFAS No. 7").
- Statements of the Governmental Accounting Standards Board (GASB Statements): *http://www.gasb.org/cs/ContentServer?c=Page&pagename=GASB%2FPage%2FGASBSectionPage&cid=1176160042391*.
  - Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998) ("GASB Statement No. 33"): *http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029148&acceptedDisclaimer=true*.
  - Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments* (June 1999) ("GASB Statement No. 34"): *http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029121&acceptedDisclaimer=true*.
- Examples of air agency financial or performance audit reports:
  - Accountability, *New York State Department of Environmental Conservation, Report of Title V Operating Permit Program Revenues, Expenses and Changes in Fund Balance for the Two Fiscal Years Ended March 31, 2009*, Report Number 2010-S-61. Accessed January 19, 2017, at: *www.osc.state.ny.us/audits/allaudits/093011/10s61.pdf*.
  - State of Washington, Department of Ecology, *Air Operating Permit Program Report Fiscal Year 2014*. Publication Number 15-02-008. Accessed January 19, 2017, at *www.fortress.wa.gov/ecy/publications/documents/1502008.pdf*.
  - State of North Carolina, Division of Air Quality, Department of Environment and Natural Resources, *Title V Air Quality Permit Program Accountability Report*, November 2009. Accessed January 19, 2017, at: *www.ncleg.net/documentsites/committees/ERC/ERC%20Reports%20Received/2009/Dept%20of%20Environment%20and%20Natural%20Resources/2009- Nov%20-%20Title%20V%20Air%20Quality%20Permit%20Program.pdf*.

List of EPA Guidance on Part 70 Fee Requirements

- January 1992 – *Guidelines for Implementation of Section 507 of the Clean Air Act Amendments – Final Guidelines*, U.S. EPA, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA. *See* pages 5 and 11-12 concerning fee flexibility for small business stationary sources: *http://www.epa.gov/sites/production/files/2015-08/documents/smbus.pdf*.

- July 7, 1993 – *Questions and Answers on the Requirements of Operating Permit Program Regulations*, U.S. EPA. *See* Section 9 at page 9-1: *http://www.epa.gov/sites/production/files/2015-08/documents/bbrd_qa1.pdf*.

- August 4, 1993 – *Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permit Programs Under Title V*, John S. Seitz, Director, OAQPS, U.S. EPA to Air Division Directors, Regions I-X ("1993 fee schedule guidance"). Note that there was an earlier document on this subject that was superseded by this document: *http://www3.epa.gov/ttn/naaqs/aqmguide/collection/t5/fees.pdf*.

- August 9, 1993 – *Acid Rain-Title V Guidance on Fees and Incorporation by Reference*, Brian J. McLean, Director, Acid Rain Division, U.S. EPA to Air, Pesticides, and Toxics Division Directors, to Regions I, IV, and VI, Air and Waste Management, Division Director, Regional II, Air and Toxics Division Directors, Regions III, VII, VIII, IX, and X and Air and Radiation Division Director, Region V: *http://www.epa.gov/sites/production/files/2015-08/documents/combo809.pdf*.

- September 23, 1993 – *Matrix of Title V-Related and Air Grant-Eligible Activities*, OAQPS, U.S. EPA, The matrix notes that it is to be "read and used in concert with the August 4, 1993 fee a[schedule] guidance" ("matrix guidance"): *http://www.epa.gov/sites/production/files/2015-08/documents/matrix.pdf*.

- October 22, 1993 – *Use of Clean Air Act Title V Permit Fees as Match for Section 105 Grants*, Gerald M. Yamada, Acting General Council, U.S. EPA to Michael H. Shapiro, Acting Administrator, Office of Air and Radiation, U.S. EPA: *http://yosemite.epa.gov/oa/eab_web_docket.nsf/filings%20by%20appeal%20number/957acb8b03e0ccaf0852574b0005aa688/$file/additional%20filing%20%20no.il%20...22.pdf*.

- November 01, 1993 – *Title V Fee Demonstration and Additional Fee Demonstration Guidance*, John S. Seitz, Director, OAQPS, U.S. EPA to Director, Air, Pesticides and Toxics Management Division, Regions I and IV, Director, Air and Waste Management Division, Regional II, Director, Air, Radiation and Toxics Division, Regional III, Director, Air and Radiation Division, Region V, Director, Air, Pesticides and Toxics Division, Region VI, Director, Air and Toxics Division, Regions VII, VIII, IX, and X ("fee demonstration guidance"): *http://www3.epa.gov/ttn/naaqs/aqmguide/collection/t5/feedemon.pdf*.

- a July 21, 1994 – *Transition from Funding of Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants*, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA to Regional Administrators, Regions I – X: *http://www.epa.gov/sites/production/files/2015-08/documents/grantmem.pdf*

- a August 28, 1994 – *Additional Guidance on Funding Support for State and Local Air Programs*, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA to Regional Administrators, Regions I – X ("additional guidance memo"): *http://www.epa.gov/sites/production/files/2015-08/documents/guidline.pdf*

- a January 23, 1996 – Letter from Conrad Simon, Director, Air & Waste Management Division, U.S. EPA Region I to Mr. Billy J. Sexton, Director, Jefferson County Department of Planning and Environmental Management, Air Pollution Control District, Louisville, Kentucky ("Sexton memo"): *https://www.epa.gov/sites/production/files/2016-04/documents/sexton_1996.pdf*

- a January 1997 – *Overview of Clean Air Title V Financial Management and Reporting – An Handbook for Financial Officers and Program Managers*, Environmental Finance Center, a University of Maryland, a Maryland Sea Grant College, University of Maryland. Supported by a grant from the U.S. EPA ("financial a manager's handbook"): *http://www.epa.gov/sites/production/files/2015-08/documents/t5finance.pdf*.

- a October 23, 2015 – *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units: Final Rule* (80 FR 64510). *See* Section XII.E, at "Implications for Title V Fee Requirements for GHGs" at page 64633: *http://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf*

- a March 27, 2018 – *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsirigotis, Director, OAQPS, U.S. EPA, to a Regional Air Division Directors, Regions I – 10 ("updated fee schedule guidance"): *https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index*.

ATTACHMENT C

Example Annual Financial Data Form for 40 CFR Part 70

Permitting Authority: _____

Annual Period: _____/_____/_____ to _____/_____/_____ (MM/DD/YYYY)

Annual Program Revenue			
A	**Total Program Revenue** (Fees Paid by Part 70 Sources)	$	
Annual Presumptive Minimum Cost Calculation			
B	Total Emissions of "Regulated Pollutants (for presumptive fee calculation)"		tons
C	Presumptive Minimum Fee Rate During Period ($/ton)	$	per ton
D	Total Greenhouse Gas (GHG) Cost Adjustments (as applicable)	$	
E = (B*C)+D	**Presumptive Minimum Cost for the Program**	**$**	
A < E or A ≥ E	**Compare Total Program Revenue to Presumptive Minimum Cost** Enter: "Less Than" or "Greater Than" or "Equal To"		
Annual Program Costs			
F	Direct Labor Costs[1]	$	
G	Other Direct Costs[2]	$	
H = F+G	**Total Direct Costs**	$	
I	Known Indirect Costs[3]	$	
J = K*L	Calculated Indirect Costs[4]	$	
K	Indirect Rate		%
L	Total Cost Base for the Part 70 Program	$	
M = I or J	**Total Indirect Costs**	$	
N = H+M	**Total Program Costs**	**$**	
O = A - N	**Annual Operating Result** *(Report deficits in parentheses)*	**$**	

[1] This is the sum of all direct labor costs, including regular payroll, overtime payroll, leave, fringe, and any other administrative surcharges.

[2] This is the sum of all other direct costs, including travel, materials, equipment, contractor, and any other costs directly allocable to the part 70 program.

[3] Indirect Costs may either be known or calculated. If known, enter on this row; if calculated, skip to the next three rows.

[4] If Indirect Costs are calculated, enter the result here, and enter the rate and base below. Accounting or budgeting personnel may be able to provide additional information on or assistance with calculating Indirect Costs.

Program Balance of Accounts (*Report deficits in parentheses*)		
P	Beginning of Year Balance[5]	$
Q = O	Annual Operating Result	$
R	Fee Revenue Transferred In (describe in comments)	$
S	Non-Exchange Revenue Transferred In (describe in comments)a- Informational Only	$
T	Fee Revenues Transferred Out (describe in comments)	$ ( )
U = O+Q+R-T	**End of Year Balance**	$

COMMENTS:

Use this section to describe any changes in accounting methods or program elements that affect the fee program, categories of revenue or expenses that do not fit into any of the listed categories or apply across multiple categories, transfers in or out, or any unusual activities or circumstances relevant to fees administration. Attach additional pages if needed.

[5] This is the prior year's "End of Year Balance."

BACKGROUND – EXAMPLE ANNUAL FINANCIAL DATA FORM FOR PART 40 CFR 70

The Example Annual Financial Data Form is a tool that may be used to collect information from a state, local, or tribal ("air agencies") part 70 programs concerning their compliance with part 70 requirements for fees. The use of this form is not required for any specific air agency or time period and it may be revised as appropriate. Air agencies may find this form useful for collecting programmatic information for their own internal tracking purposes.

Fee sufficiency. The primary purpose of the revenue, costs, and balance of accounts sections of the financial data form is to collect information concerning the sufficiency of fees, consistent with Clean Air Act (Act) § 502(b)(3)(A) and 40 CFR § 70.9(a). The fee sufficiency requirements include requirements for air agencies to collect annual fees (or the equivalent over some other period) that are sufficient to cover all reasonable direct and indirect costs of the program and to track if required fees are being diverted for non-part 70 purposes.[6]

Presumptive minimum. A secondary use for the financial data form is to assess an air agency's status with respect to the "presumptive minimum" of part 70.[7] This assessment may have been important when an air agency was originally approved to collect above the "presumptive minimum," but changes made over time have resulted in total annual fees being collected that are less than the "presumptive minimum."[8] This assessment is important because 40 CFR § 70.9(b)(3) requires air agencies that collect a less than the presumptive minimum to submit a "detailed accounting" to ensure fee sufficiency, and air agencies that were originally approved to collect at least the presumptive minimum would not have submitted the detailed accounting with the program submittal. Examples of cases where an air agency's status in this respect may have changed include where the air agency uses a formula to calculate the presumptive minimum that is outdated or inconsistent with a 40 CFR § 70.9(b)(2) or where the program was approved to charge fees to individual sources using the methodology for calculating the presumptive minimum pursuant to 40 CFR § 70.9(b)(2) and the air agency's requirements for fee payment from individual sources are outdated or inconsistent with the part 70 calculation.[9]

The EPA may use its discretion to decide when this form should be completed by an air agency and which sections of the form should be completed. The EPA will evaluate any information submitted and determine appropriate next steps.

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[6] The requirements that fees be sufficient to cover all reasonable direct and indirect program costs, and that such fees not be diverted for other purposes, applies to all title V permit programs, regardless of whether or not the program was approved to collect "not less than" or "less than" the presumptive minimum.

[7] The presumptive minimum of CAA § 502(b)(3)(B) and 40 CFR § 70.9(b)(2) is generally calculated by multiplying a dollar per ton rate (which is adjusted annually for increases in the Consumer Price Index) by the tons of "regulated pollutants (for presumptive fee calculation)" emitted by all part 70 sources in an air agency for a year (or equivalent period) and adding a "GHG cost adjustment," which is a set dollar amount to reflect certain increased costs for permitting.

[8] Air agencies have flexibility to charge fees to sources on any basis, including to charge emission fees, application fees, service-based fees, or other types of fees, regardless of whether or not the program was approved to collect "not less than" or "less than" the presumptive minimum.

[9] The presumptive minimum calculation of 40 CFR § 70.9(b)(2) was updated in 2015 to add a GHG cost adjustment; see the final rule, *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units; Final Rule* (80 FR 64510, October 23, 2015). *See* Section XII.E, "Implications for Title V Fee Requirements for GHGs" at page 64633: *http://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf.*

Accounting methods: The part 70 rules do not generally require any particular governmental accounting standards or tracking systems to be used by air agencies. However, part 70 contains certain requirements for tracking permit fees and program costs and for funding the program costs with permit fees that must be met by all air agencies, regardless of the accounting standards and tracking systems being used. Due to variability and changes in accounting standards, systems, and practices, it is important for air agencies to note changes that may affect part 70 fees, costs, and accounting practices in the comments section of this form.

The EPA recognizes the following resources may be helpful in understanding governmental accounting standards as they relate to part 70 programs:

- Handbook of Federal Accounting Standards and Other Pronouncements, as Amended, as of June 30, 2015, Federal Accounting Standards Advisory Board (FASAB). *http://www.fasab.gov/pdffiles/2015_fasab_handbook.pdf*
  - Statement of Federal Financial Accounting Standards 4: *Managerial Cost Accounting Standards and Concepts*, page 396 of the FASB Handbook (June 2015) ("SFFAS No. 4").
  - Statement of Federal Financial Accounting Standards 7: *Accounting for Revenue and Other Financial Sources and Concepts for Reconciling Budgetary and Financial Accounting*, page 592 of the FASAB Handbook (June 2015) ("SFFAS No. 7").
- Statements of the Governmental Accounting Standards Board (GASB): *http://www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1176160042391#gasbs25*
  - Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998) ("GASB Statement No. 33"): *http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029148 &acceptedDisclaimer=true*
  - Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments* (June 1999) ("GASB Statement No. 34"): *http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029121 &acceptedDisclaimer=true*

Definition of terms: Several terms (e.g., "Direct Labor" and "Indirect Costs") used in the Example Annual Financial Data Form are not defined in part 70. Some terms are defined in the EPA's fee guidance (particularly the EPA's updated fee schedule guidance[10]), in the U.S. Office of Management and Budget's (OMB's) Circular A-87 Revised (Cost Principles for State, Local, and Indian Tribal Governments), and in the FASB Handbook's chapter on Managerial Cost Accounting Standards and Concepts (SFFAS No. 4), among other reference documents.

Supporting information: The information reported on this example form should be based on relevant supporting accounting information or documentation. Air agencies that complete the form for submittal to the EPA should maintain such supporting information for submittal to the EPA upon request.

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[10] *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsirigotis, Director, OAQPS, to Regional Air Division Directors, Regions I – 10, March 27, 2018, (updated fee schedule guidance).

INSTRUCTIONS – EXAMPLE ANNUAL FINANCIAL DATA FORM FOR PART 70

These instructions are a general explanation of how to complete the attached Example Annual Financial Data Form for Part 70 ("example financial form"). This form is not required to be submitted on any frequency by air agencies – it is simply a useful example of how an EPA Region may collect financial information related to title V fee requirements. The EPA Regions may revise this form to suit a particular air agency or may opt to only require certain sections be completed.

Annual Program Revenue

- Total Program Revenue (Fees Paid by Part 70 Sources)($): Include all title V fees paid directly by part 70 sources, including emission fees, application fees, and other fees under the air agency's fee schedule.
  - The fees collected under a part 70 program are referred to as "Exchange Revenue" or "Earned Revenue" in governmental accounting guidance because a good or service is provided by a governmental entity (e.g., a permit) in exchange for a price (e.g., a permit fee).[11] Also, governmental accounting guidance provides that only revenue classified as "Exchange Revenue" should be compared against costs to determine the overall financial results of operations for a period.[12] This means that legislative appropriations, taxes, grants, fines, or penalties, which are generally characterized as "Non-Exchange Revenue,"[13] should not be compared against costs to determine if fees are sufficient to cover part 70 program costs.
  - Some part 70 programs have direct access to permit fees to cover costs. However, other part 70 programs are required by state or local law to deposit permit fees into general accounts, with operating costs subject to legislative appropriation. In both scenarios, if the funds were originally paid as permit fees and used for part 70 purposes for the report year, the fees may be considered "Total Program Revenue" and entered as such on the example financial form. Permit fees that were retained in a prior year and transferred for use in the report year should be reported as "Funds Transferred In."
  - Note that any non-part 70 fee revenue ("Non-Exchange Revenue") should only be identified for informational purposes in the "Program Balance of Accounts" section of the example financial form, specifically the "Non-Exchange Revenue Transferred In" line.[14]

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[11] *See* Statement of Recommended Accounting Standards Number 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, issued by the Federal Accounting Standards Advisory Board (FASAB) ("FASAB No. 7") at page 2. Also *see* Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998), issued by the Governmental Accounting Standards Board (GASB) at pages 1-4. Conversely, "Non-Exchange Revenue" arises primarily from the exercise of governmental power to demand payment from the public (e.g., income tax, sales tax, property taxes, fines, and penalties) and when a government gives value directlye without directly receiving equal value in return (e.g., legislative appropriations and intergovernmental grants).

[12] *See* FASAB No. 7 at page 8.

[13] "Non-Exchange Revenue" arises primarily from the exercise of governmental power to demand payment from the public (e.g., income tax, sales tax, property taxes, fines, and penalties) and when a government gives value directly without directly receiving equal value in return (e.g., legislative appropriations and intergovernmental grants).

[14] Since "Non-Exchange Revenue" is not allowed to be counted as part 70 fees, they should not be compared to costs or carried over to the "Beginning of Year Balance" or "End of Year Balance" lines.

Annual Presumptive Minimum Calculation

This section helps to determine if an air agency's status is considered to be "presumptively adequate" to fund program costs for a year.[15] This determination is relevant to part 70 when an air agency's feea schedule was approved to be above the "presumptive minimum," but due to changes over time, it is now collecting and retaining fee revenue below the "presumptive minimum." When such a change occurs, 40 CFR § 70.9(b)(5) requires the air agency to submit a "detailed accounting" to show that its fees are sufficient to cover the part 70 program costs.

- Total Emissions of "Regulated Pollutants (for presumptive fee calculation)" (tons/year): Report the actual emissions of "Regulated Pollutants (for presumptive fee calculation)," as the term isa defined in 40 CFR § 70.2, for all part 70 sources for the year. Also *see* 40 CFR § 70.9(b)(2)(ii)a and (iii) for additional information on emissions that may be excluded from the total. The EPA sometimes refers to these emissions as "Fee Pollutants" since they are only used for feea purposes.a

- Presumptive Minimum Fee Rate During Period ($/ton): The EPA calculates the "Presumptivea Minimum Fee Rate" ($/ton) for part 70 in September of each year, and the fee rate is effectivea from September 1 through August 31 of the following year. The EPA publishes the fee rate on the EPA's title V permit website.[16] If a part 70 program uses a different 12-month period, thena the fee rate in effect at the beginning of the reporting period or an average fee rate (prorated by month) may be used.a

- Total Greenhouse Gas (GHG) Cost Adjustments, as applicable ($): A final rule publisheda October 23, 2015, included a "GHG Cost Adjustment," which is part of the calculation of the "presumptive minimum" for an air agency under part 70.[17] The adjustment is intended to reflecta the increased costs of permitting GHGs for part 70 programs.a

- Presumptive Minimum Cost for the Program ($): To determine the total "presumptive minimum"a for an air agency, multiply the actual emissions of "Regulated Pollutants (for presumptive fee calculation)" by the "Presumptive Minimum Fee Rate" and add the "GHG Cost Adjustment" (as applicable) for the period.a

- Compare Revenue to Presumptive Minimum Cost: Compare the "Total Program Revenue" to the calculated "Presumptive Minimum Cost for the Program" to determine if the fee revenue has fallen below the "Presumptive Minimum." If the total program revenue is lower, a "detaileda accounting" is required to show that fee revenue is sufficient to cover the program costs.[18]

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[15] *See* 40 CFR §§ 70.9(b)(2)(i) through (v) for more on the "presumptive minimum."

[16] *See https://www.epa.gov/title-v-operating-permits/permit-fees.*

[17] *See* 80 FR 64659 and 40 CFR §§ 70.9(b)(2)(i) and § 70.9(b)(2)(v) concerning the "GHG cost adjustment" for part 70.

[18] *See* 40 CFR § 70.9(b)(5).

Annual Program Costs

The full cost of a part 70 program is described in accounting terms as being comprised of all reasonable "direct and indirect costs." To assess the full cost, one should assess the total resources used to conduct a program or complete an activity under a program. Full cost includes all "direct and indirect costs," regardless of funding sources. "Indirect costs" exist whether or not the program exists, while "direct costs" exist only if the program exists. If, by eliminating the program, a particular cost is eliminated, then the cost is labeled a "direct cost."

Examples of "Direct Labor Costs," "Other Direct Costs," and "Indirect Costs" are provided below. It is beyond the scope of this example financial form to include a review of whether all part 70 program activities described in the separate updated fee schedule guidance[19] are included in the "Direct and Indirect Costs;" however, such a review may be part of a "detailed accounting" or other EPA oversight activity.

- Direct Labor Costs ($): Salary and wages for direct work on part 70, including for professional, administrative, and supervisory staff. These costs should include fringe benefits (compensation in addition to regular salary and wages). Also, include the portion of "Direct Labor Costs" not covered by employee contributions, such as those associated with employee contributions to insurance and retirement.

- Other Direct Costs ($): Direct part 70 expenses, such as materials, equipment, professional services, official travel (i.e., food and lodging), public notice, public hearings, and contractors.

- Indirect Costs ($): "Indirect Costs" are funds spent on general administration (sometimes referred to as overhead). For a part 70 program, this is a share of costs associated with managing the organization within which the permit program resides, represented through an "Indirect Rate." For example, to the extent that a program resides within a larger office, the program may be charged a proportionate share of the overhead expense associated with the larger office. The budget or accounting office of the environmental division or department may be able to provide the indirect costs for part 70 or may be able to assist with determining them using one of the following methods:

  - Known Indirect Costs ($): This is the known value of "Indirect Costs" for a part 70 program, such as may be provided by an air agency budget or accounting office.

  - Calculated Indirect Costs ($): If the "Indirect Costs" are not known, then multiply an "Indirect Rate" (e.g., a percentage that represents a fraction of total costs that are indirect costs) by a known "Total Cost Base" (either "Total Costs" or "Total Labor Costs" for the part 70 program) to calculate "Indirect Costs." If calculated in this manner, the "Indirect Rate" and the "Total Cost Base" should be included on the example financial form.

- Annual Operating Result ($): The difference between the "Total Program Revenue" and "Total Program Costs" reveals the degree to which the program generated a surplus, deficit, or breaks even. If costs exceed fee revenue, then there was a deficit. If fee revenue exceeds costs, then there was a surplus. Deficits should be reported in parentheses to indicate a negative number.

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[19] *See Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*. Peter Tsirigotis, Director, OAQPS, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018 (updated fee schedule guidance).

Program Balance of Accounts

This section of the example financial form shows the program's overall fiscal status over time based on the balance at the beginning of the period, changes in account balances from operations, fund transfers, and resulting year-end balance.

- Beginning of Year Balance ($): The net balance (surplus or deficit) at the beginning of the year. If unknown, enter zero. This is the prior year's "End of Year Balance."

- Annual Operating Result ($): The amount of fees minus costs for the year. If negative, include in parentheses to indicate a deficit for the year.

- Fee Revenue Transferred In ($): Permit fee revenue not already accounted for above that is transferred from other accounts, such as fee revenue that was collected and retained in prior years used to cover costs for this year. Enter the amount of fee revenue and describe the source of funds in the comments section (e.g., permit fees retained in prior years) and whether the transfers are temporary (e.g., one-time) or permanent (e.g., recurring). If the funds originated as permit fees for the year being reported, enter the amount on the "Total Program Revenue" line, rather than this line.

- Non-Exchange Revenue Transferred In ($): Non-Exchange Revenue (e.g., grants, taxes, penalties, fines, and similar) transferred in to cover program costs. Enter the amount here and describe the source of funds in the comments section. This line is for information only and will not be included in any calculations of permit fee revenue on this form.

- Fee Revenue Transferred Out ($): Permit fee revenue transferred out of program accounts during the report year. In the comments section, describe the intended use of the funds and whether the transfer is permanent or temporary. If you intend to use the fees in future years for the part 70 program, please indicate so in comments. If not, please describe the intended use of funds and whether the fees are in excess of the costs for the year. Any such transfers out will be subject to close scrutiny by the EPA.

- End of Year Balance ($): The net balance (surplus or deficit) at the end of the year. In the comments section, please describe any steps that will be taken to address a significant deficit, if known or available.

EXAMPLES OF TYPICAL DIRECT AND INDIRECT COSTS

The following examples are intended to help permitting staff understand how various types of costs would be categorized for accounting purposes. For a complete list of part 70 program activities that should be included as part 70 costs, *see* the EPA's separate updated fee schedule guidance.

Direct Costs:
"Direct Costs" consists of two categories: 1) "Direct Labor Costs" and 2) "Other Direct Costs."

- a Examples of Direct Labor Costs:
  - Cost of "direct labor";a
  - Fringe benefits (i.e., retirement, health insurance, and life insurance); anda
  - Leave, holiday, overtime and premium pay, and other personnel costs.a

- a Examples of Other Direct Costs:
  - Equipment purchases; anda
  - Miscellaneous items, such as supplies and materials, equipment rentals, travel, purchased services such as printing, and contractual services.a

Indirect Costs:
"Indirect Costs" can be thought of as the time spent on administrative support and other office expenses, which are not solely related to the program's operation because they benefit multiple programs or cost objectives, but are needed to operate a part 70 program.

- a Examples of Indirect Costs:a
  - Space rental, utilities, including telephones;a
  - Administrative support related to an office's overall mission, including such costs as procurement, contracting, office services, property management, vehicle management, supply, finance, payroll, voucher processing, personnel services, records management, and document control;a
  - Miscellaneous supplies and materials, including postage;a
  - Data processing, management, and control;a
  - Equipment rentals and costs;a
  - Training and development;a
  - Budget development, planning, and coordination;a
  - Public information and inquiries;a
  - Safety management, including inspection, training, and promotion;a
  - Recurring reports, such as accounting or property reports; anda
  - Unemployment Compensation, Equal Employment Opportunity Office costs and othera affirmative action program costs.a

DETERMINING THE PROPORTIONAL SHARE OF INDIRECT COSTS

When "Indirect Costs" are not known, they can be calculated though the use of an "Indirect Rate." Generally, an "Indirect Rate" is calculated by dividing total "Indirect Costs" by total "Direct Costs." Because air agency accounting methods vary, the indirect and direct costs can be for all environmental programs, the environmental department or division, or the air program. The resulting "Indirect Cost Rate" is the percentage of "Total Costs" that are "Indirect Costs." The resulting "Indirect Rate" is then multiplied by the "Total Cost Base," which may be either "Total Direct Labor Costs" or "Total Costs" for part 70, as shown below.

Indirect Cost Rate = Total Indirect Costs / Total Direct Costs

Calculated Indirect Costs = Indirect Cost Rate * Total Direct Labor Costs for Part 70

or

Calculated Indirect Costs = Indirect Cost Rate * Total Costs for Part 70

FOR MORE INFORMATION ON DETERMINING AIR AGENCY COSTS

For further information on determining costs for state, local, and tribal governments, *see* OMB Circular A-87 Revised, Cost Principles for State, Local and Indian Tribal Government (May 10, 2004) and OMB Circular A-133, Audits of State, Local Governments, and Non-Profit Organizations (last revised June 26, 2007). These guidance documents are not specific to part 70 but are generally useful for understanding costs for the purposes of the part 70 program.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

MAR 27 2018

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V

FROM: Peter Tsirigotis
Director

TO: Regional Air Division Directors, Regions 1 – 10

The attached guidance is being issued in response to the Environmental Protection Agency Office of Inspector General's (OIG) 2014 report regarding the importance of enhanced EPA oversight of state, local, and tribal[1] fee practices under title V of the Clean Air Act (CAA).[2] Specifically, this guidance reflects the EPA's August 22, 2014, commitment to the OIG in response to OIG's Recommendation 1 to "assess our existing fee guidance and to re-issue, revise, or supplement such guidance as necessary" (we refer to the attached guidance as the "**updated fee schedule guidance**"). The EPA's response to the OIG's other recommendations are being issued concurrently in a separate memorandum and guidance concerning title V program and fee evaluations ("title V evaluation guidance").[3]

Title V of the CAA and 40 CFR part 70 contain the minimum requirements for operating permit programs developed and administered by air agencies, including requirements that each program issue operating permits to certain facilities (facilities that are "major sources" of air pollution and certain other facilities) and that each program charge fees ("permit fees") to these facilities to fund the permit program. These operating permits are intended to identify all federal air pollution control requirements that apply to a facility ("applicable requirements") and to require the facility to track and report compliance pursuant to a series of recordkeeping and reporting requirements. Section 502(b)(3) of the CAA requires each air agency to collect fees "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer" its title V permit program.[4] The 40 CFR part 70 regulations establish the minimum program

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[1] As used herein, the term "air agency" refers to state, local, and tribal agencies.
[2] *Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air Act Title V Revenues*; U.S. EPA Office of the Inspector General. Report No. 15-P-0006, October 20, 2014 ("OIG Report").
[3] *Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70*, Peter Tsirigotis, Director, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018 ("title V evaluation guidance"). See the EPA's title V guidance website at *https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index*.
[4] 42 U.S.C. § 7661a(b)(3)(A).

requirements for operating permit programs, including requirements for fees to be administered by air agencies with approved part 70 programs.[5]

On August 4, 1993, the EPA issued a memorandum, commonly referred to as the "1993 fee schedule guidance," to provide initial guidance on the Agency's approach to reviewing fee schedules for part 70 programs.[6] Since that time, the EPA has issued a number of memoranda and a final rule[7] that have touched upon, revised, or clarified certain topics contained in the 1993 fee schedule guidance.[8] The attached updated fee schedule guidance provides additional direction on how the EPA interprets the title V permit issuance and fee collection activities, as well as discussion of other fee requirements for air agencies. In addition to the memoranda and final rule noted above, the updated fee schedule guidance includes numerous changes to remove outdated regulatory provisions and focuses on the review of existing part 70 programs, rather than on initial program submittals.[9]

The updated fee schedule guidance sets forth updated principles, which will generally guide the EPA's review of part 70 fee programs. These updates are consistent with the fee requirements of title V and part 70, as well as prior guidance on fee requirements. Accordingly, these updates do not themselves provide substantively new fee guidance or create any inconsistencies with fee requirements or prior fee guidance.

The development of this guidance included outreach and discussions with stakeholders, including the EPA Regions, the National Association of Clean Air Agencies, and the Association of Air Pollution Control Agencies.

If you have any questions concerning the updated fee schedule guidance, please contact Juan Santiago, Associate Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, at (919) 541-1084 or *santiago.juan@epa.gov*.

Attachments:
1. Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs under Title V
2. Attachment A – List of Guidance Relevant to Part 70 Fee Requirements
3. Attachment B – Example Presumptive Minimum Calculation

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[5] 40 C.F.R. § 70.9.

[6] *See Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs under Title V*, John S. Seitz, Director, OAQPS, U.S. EPA, to Air Division Directors, Regions I-X (August 4, 1993) ("1993 fee schedule guidance") at page 1. Note that there was an earlier document on this subject that was superseded by the 1993 fee schedule guidance.

[7] *See* the October 23, 2015, final rule, *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units*. 80 FR 64510, 64633 (Section XII.E "Implications for Title V Fee Requirements for GHGs").

[8] A list of the relevant title V fee-related guidance memoranda is included as Attachment A.

[9] At this time, all air agencies have EPA-approved part 70 programs. It is conceivable that additional part 70 program submittals will be received in the future for a number of Indian tribes, and, if so, the EPA will work closely with the tribes to assist them with identifying activities which must be included in costs related to the program submittal and to meet other fee requirements of part 70.

DISCLAIMER

These documents explain the requirements of the EPA regulations, describe the EPA policies, and recommend procedures for sources and permitting authorities to use to ensure that title V fee schedules and fee evaluations 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's regulations, but the documents do not establish legally binding requirements in and of themselves.

Updated Guidance on EPA Review of
Fee Schedules for Operating Permit Programs under Title V

The purpose of this document and the attachments is to provide guidance on the Environmental Protection Agency's (EPA's) review of fee schedules for operating permit programs under 40 CFR part 70 (part 70), the regulations that set minimum requirements for permit programs administered by state, local, and tribal air agencies (referred to here as, "air agencies") authorized under title V of the Clean Air Act (CAA or Act). This document updates and clarifies the previous fee schedule guidance issued by the EPA on August 4, 1993 (the "1993 fee schedule guidance").[1] This updated fee schedule guidance clarifies which permit program costs must be included in an analysis to demonstrate that adequate fees are collected to fund all part 70 program costs. The guidance also discusses other fee-related requirements for air agencies. The updated fee schedule guidance focuses on the costs of program implementation, rather than on the costs of initial program development (as was the case for the 1993 fee schedule guidance).

I. General Principles for Review of Title V Fee Schedules

Section 502(b)(3)(A) of the Act requires operating permit programs to fund all "reasonable direct and indirect costs" of the permit programs through fees collected from "part 70 sources"[2] and requires the fees to be sufficient to cover all reasonable permit program costs.[3] The terms "fee schedule" and "permit fees" are sometimes used interchangeably to describe the fees that an air agency charges to part 70 sources to fulfill this requirement.[4] Section II of this guidance provides an explanation of the term "direct and indirect costs" and a detailed explanation of specific permit program activities to be included in costs for the purpose of analyzing whether the permit fees are sufficient to cover all the permit program costs.

The fees collected under a part 70 program are classified as "exchange revenue" or "earned revenue" in governmental accounting guidance because a good or service (e.g., a permit) is provided by a governmental entity in exchange for a price (e.g., a permit fee).[5] Also, governmental accounting guidance provides that only revenue classified as "exchange revenue" should be compared to costs to

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[1] *See Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs under Title V*, John S. Seitz, Director, OAQPS, U.S. EPA, to Air Division Directors, Regions I-X (August 4, 1993) ("1993 fee schedule guidance").

[2] The term "part 70 sources" is defined in 40 CFR § 7.2 to mean "any source subject to the permitting requirements of this part, as provided in 40 CFR §§ 70.3(a) and 70.3(b) of this part." Thus, a source is a part 70 source prior to obtaining a part 70 permit if the source is subject to permitting under the applicability provisions of 40 CFR § 70.3.

[3] *See* 40 CFR § 70.9(a).

[4] The fee schedule is typically included in the regulations that the air agency uses to implement part 70; it is a component of the part 70 program. The fee schedule (and other elements of an air agency's regulations for part 70) can vary significantly across air agencies.

[5] *See* Statement of Recommended Accounting Standards Number 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, issued by the Federal Accounting Standards Advisory Board (FASAB) ("FASAB No. 7") at page 2. *See also* Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998), issued by the Governmental Accounting Standards Board (GASB) at pages 1-4 ("GASB No. 33").

determine the overall financial results of operations for a period.[6] This means that legislative appropriations, taxes, grants,[7] fines and penalties, which are generally characterized as "nonexchange revenue,"[8] should not be compared to part 70 program costs to determine if permit fees are sufficient to cover costs.

Any fee required by part 70 must "be used solely for permit program costs" (in other words, the fees must not be diverted for non-part 70 purposes).[9] Many air agencies transfer fees that are in excess of program costs for a particular year into accounts to be used for part 70 purposes in another year when there is expected to be a fee shortfall, and this is an acceptable practice. However, if title V fees are transferred for uses not authorized by part 70 (e.g., highway maintenance or other general obligations of government), they would be considered improperly diverted.

Each air agency is required, as part of its part 70 program submittal, to submit a "fee demonstration" to show that its fee schedule would result in the collection and retention of fees sufficient to cover program costs, including an "initial accounting" to show that "required fee revenues" would be used solely to cover program costs.[10]

The EPA will generally presume that a fee schedule is sufficient to cover program costs if it results in the collection and retention of fees in an amount above the "presumptive minimum" —i.e., "an amount *not less than* $25 per ton" adjusted annually for increases in the Consumer Price Index[11] "times the total tons of the actual emissions of each regulated air pollutant (for presumptive fee calculation) emitted from part 70 sources," plus any greenhouse gas (GHG) cost adjustments, as applicable.[12] A fee schedule that is expected to result in fees above the "presumptive minimum" is considered to be "presumptively adequate." Note that the "presumptive minimum" is unique to each air agency because the total tons of actual emissions of "regulated air pollutants (for presumptive fee calculation)" are unique to each air agency.

As part of a fee demonstration, air agencies with fee schedules that would not be presumptively adequate are required to submit a "detailed accounting" to show that collection and retention of fee

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[6] *See* FASAB No. 7 at page 8; GASB No. 33.

[7] Concerning grants, an EPA memo, *Use of Clean Air Act Title V Permit Fees as Match for Section 105 Grants*, Gerald Yamada, Acting General Counsel, U.S. EPA, to Michael H. Shapiro, Acting Assistant Administrator, Office of Air and Radiation, U.S. EPA, October 22, 1993, states that part 70 fees are "program income" under 40 CFR § 31.25(a), and, because of this, part 70 fees cannot be used as match for section 105 grants and no air agency may count the same activity for botht grant and part 70 fee purposes.t

[8] "Nonexchange revenue" arises primarily from the exercise of governmental power to demand payment from the public (e.g., income tax, sales tax, property taxes, fines, and penalties) and when a government gives value directly without directly receiving equal value in return (e.g., legislative appropriations and intergovernmental grants).

[9] *See* 40 CFR § 70.9(a).

[10] *See* 40 CFR §§ 70.9(c)-(d) (fee demonstration requirements); 1993 fee schedule guidance (explaining that preparing the fee demonstrations that is part of the initial part 70 program submittal).

[11] *See* CAAt§ 502(b)(3)(B); 40 CFR § 70.9(b). The presumptive minimum fee rate is adjusted for increases in the Consumer Price Index each year in September. The fee rate for the period of September 1, 2016, through August 31, 2017, is $48.88 per ton. For more information, including a list of historical adjustment to the fee rate, *see https://www.epa.gov/title-v-operating-permits/permit-fees*.

[12] *See* 40 CFR § 70.9(b)(2) (emphasis added). The components of the "presumptive minimum" calculation—including certain emissions that may be excluded from the calculation, and an upward "GHG cost adjustment" that may apply—are addressed in 40 CFR §§ 70.9(b)(2)(i)-(v).

revenue would be sufficient to cover program costs.[13] Air agencies are also required to provide an "initial accounting" to show how "required fee revenues" will be used solely to cover permitting program costs.[14] Air agencies with fee schedules considered "presumptively adequate" are nevertheless required to submit fee demonstrations,[15] but they may be "presumptive minimum program cost" demonstrations[16] showing that expected fee revenues are above the "presumptive minimum" calculated for the air agency. In order to receive the EPA's approval, any fee demonstration must provide an "initial accounting" showing how required fee revenues will be used solely to cover program costs.[17]

After an air agency fee program is approved by the EPA, there are several fee requirements that may apply to the permit program as circumstances dictate. One requirement is for an air agency to submit, as required by the EPA, "periodic updates" of the "initial accounting" portion of the fee demonstration to show how "required fee revenues" are used solely to cover the costs of the permit program.[18] Further, an air agency must submit a "detailed accounting" demonstrating that the fee schedule is adequate to cover costs if an air agency changes its fee schedule to collect *less than* the presumptive minimum or if the EPA determines—based on the EPA's own initiative, or based on comments rebutting a presumption of fee sufficiency—that there are serious questions regarding whether the fee schedule is sufficient to cover the costs.[19]

In addition, title V and part 70 provide general authority for the EPA to conduct oversight activities to ensure air agencies adequately administer and enforce the requirements for operating permits programs, including that the requirements for fees are being met on an ongoing basis.[20] One method the EPA uses to perform such oversight is through periodic program or fee evaluations of part 70 programs. As part of such an evaluation, the EPA may carefully review how the state has addressed the fee requirements of part 70 as previously described and work with the air agency to seek improvements or make corrections and adjustments if any fee concerns are uncovered. Also, as part of such an evaluation, the EPA may require "periodic updates" to a fee demonstration or a "detailed accounting" that fees are sufficient to cover permit program costs.[21] See the EPA's separate *Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70* ("title V evaluation guidance") for more on this subject.[22]

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[13] *See* 40 CFR § 70.9(b).
[14] *See* 40 CFR § 70.9(d).
[15] *See* 40 CFR § 70.9(c).
[16] *See* Sections 1.1 and 3.2 of the fee demonstration guidance.
[17] *See* 40 CFR § 70.9(d).
[18] *See* 40 CFR § 70.9(d).
[19] *See* 40 CFR § 70.9(b)(5); fee demonstration guidance, Section 2.0 (providing an example of a "detailed accounting"). The scope and content of a "detailed accounting" may vary but will generally involve information on program fees and costs and other accounting procedures and practices that will show how the air agency's fee schedule will be sufficient to cover all program costs.
[20] *See* CAA § 502(i); 40 CFR § 70.10(b).
[21] *See* 40 CFR §§ 70.9(a); 70.9(b)(1), (5)(ii).
[22] *Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70*, Peter Tsirigotis, Director, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018.

II.a Types of Costs and Activities Included in Title V Costsa

A.a Overviewa

Activities that count as part 70 costs (direct and indirect costs of part 70).tPart 70 uses the term "permit program costs" to describe the costs that must counttfor fee purposes under part 70.[23] This term is defined in 40 CFR § 70.2 as "all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in [40 CFR § 70.9(b)] (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration)." At a minimum, any air program activity performed by an air agencyt under title V or part 70 must be included in program costs. Many of the activities required under title V or part 70 are described in Sections II.B through II.K of this guidance.t

As described above, part 70 costs must include all "reasonable direct and indirect costs"[24] that are incurred by air agencies intthe development, implementation, and enforcement of the part 70 program. "Direct costs" are expenses thattcantbe directly attributed to partt70 program activities or services. "Direct costs" can generally be subdivided into two categories: "direct labor costs" and "other direct costs." The term "direct labor costs" refers to salary and wages for direct work on part 70, including fringe benefits. The term "other direct costs" refers to other direct part 70 expenses, such as materials, equipment, professional services, official travel (e.g.,ttransportation,tfood and lodging), public notices, public hearings, and contracted services. "Indirect costs" are costs for "general administration" or "overhead" that are nottdirectly attributable to a part 70 program because they benefit multiple programs or cost objectives, but they are needed to operate a part 70 program. "Indirect costs" for a part 70 program are typically determined based on an indirect rate or a proportional share of the expenses of a larger organization. Examples of "indirect costs" include, but are not limited to, costs for utilities,trent, general administrative support, data processing charges, training and staff development, budget and accounting support, suppliestand postage.

Intaddition, note that air agencytaccounting practices vary in how they nominally categorize costs as "direct costs," "indirect costs," or "other direct costs," depending on the specific nature of the activity.t An example would be training costs, which are typically treated as "indirect costs" but sometimes ast "direct costs," particularly where the training istabout part 70 (e.g., for permit staff development). While accounting practices and terminology may vary among air agencies, the importanttprinciple to remember is that all reasonable direct and indirect costs of the program must be represented in the costs reported to the EPA, regardless of how the costs are categorized by the air agency.

Part 70 and the 1993 fee schedule guidance describe the part 70 activities of "reviewing and acting on any application for a part 70 permit"[25] and "implementing and enforcingtthe terms of anytpart 70t

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[23] See 40 CFR § 70.9(a).

[24] The phrases, "reasonable direct and indirect costs" and "reasonable (direct and indirect) costs" have the same meaning. The phrase "reasonable direct and indirect costs" was initially used by the EPA in the 1993 fee schedule guidance, page 1. The phrase "reasonable (direct and indirect) costs" is also found in CAA section 502(b)(3)(A), (C)(iii).

[25] The response to comments document for the part 70 final rule clarifies that the phrase "acting on permit applications" in section 503(c) of the Act means the act of issuing or denying a permit, not just beginning review of a permit application. *See* Technical Support Document for Title V Operating Permits Programs (May 1992) at page 4-4, EPA Docket No. EPA-HQ-OAR-2004-0288; Legacy Docket No. A-90-33.

permit," and these activities must be included in part 70 costs.[26] The following paragraphs use these phrases to clarify the extent that certain activities performed by the air agency must be included in part 70 costs. The phrase "reviewing and acting on any application for a part 70 permit" refers to all activities related to processing the permit application and issuing (or denying) the final part 70 permit, while the phrase "implementing and enforcing the terms of any part 70 permit" refers to all activities necessary to administer and enforce final part 70 permits, prior to the filing of an administrative or judicial complaint or order.[27]

Also, the following paragraphs clarify the extent to which fees must fund the costs of "permit programs under provisions of the Act other than title V" (hereafter referred to as "other permits") (e.g., preconstruction review permits) and "activities which relate to provisions of the Act in addition to title V" (hereafter referred to as "other activities") (e.g., a requirement for an air agency to develop a case-by-case emissions standard for an existing source).[28]

Costs related to "other permits."[29] The costs of "implementing and enforcing" the terms of a part 70 permit must be treated as a part 70 cost.[30] Thus, part 70 costs must include the cost of implementing and enforcing any term or condition of a non-part 70 permit required under the Act[31] that is incorporated into a part 70 permit and meets the definition of "applicable requirement"[32] in part 70. Similarly, the cost of implementing and enforcing any term or condition of a consent decree or order that originates in a non-part 70 permit that has been incorporated into a part 70 permit must be included as a part 70 cost.[33]

The costs of implementing and enforcing "applicable requirements" from a non-part 70 permit that will go into a part 70 permit in the future may be counted as part 70 costs. However, once a source has

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[26] The phrases "reviewing and acting on any application for a part 70 permit" and "implementing and enforcing the terms of any part 70 permit" are found at 40 CFR § 70.9(b)(1)(ii) and (iv). Similar phrases are found in the EPA's 1993 fee schedule guidance at page 3 and the phrases in the guidance have the same meaning as the phrases in part 70. *See also*, CAA § 502(b)(3)(A).

[27] An EPA memo, *Matrix of Title V-Related and Air Grant-Eligible Activities*, OAQPS, U.S. EPA, September 23, 1993 (the "matrix guidance"), page 8, which clarifies that enforcement costs are counted for part 70 purposes prior to the filing of a complaint or order. *See* page 8.

[28] The phrases cited here were originally discussed on pages 2 and 3 of the cover memorandum for the 1993 fee schedule guidance.

[29] Note that the EPA's 1993 fee schedule guidance contains the statement that "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 fee." This statement has been interpreted by some to mean that the costs of non-title V permits "are not needed" or "may *optionally*" be counted in title V costs.

[30] *See* 40 CFR § 70.9(b)(1)(iv).

[31] Examples of non-part 70 permits required under the Act may include "minor new source review" (minor NSR) permits, "synthetic minor" permits, Prevention of Significant Deterioration (PSD) permits, and Nonattainment NSR permits authorized under title I of the Act.

[32] "Applicable requirements" are the air quality requirements that must be included in part 70 permits. See the definition of "applicable requirement" in 40 CFR § 70.2, which includes "any terms and conditions of any preconstruction permits issued pursuant to any regulations [under title I]," and certain requirements under titles I, III, IV and VI of the Act.

[33] The EPA has previously explained that consent decrees and orders reflect the conclusion of a judicial or administrative process resulting from the enforcement of "applicable requirements," and, because of this, all CAA-related requirements in such consent decrees and orders "are appropriately treated as 'applicable requirements' and must be included in title V permits. . ." *See In the Matter of Citgo Refining and Chemicals Company, L.P.*, Order on Petition Number VI-2007-01, at 12 (May 28, 2009).

submitted a timely and complete part 70 application and paid part 70 fees,tall costs oftimplementing and enforcing the non-part 70 permit must be counted as part 70 costs.[34]

Also, any implementation and enforcement activities related to a requirementtthat is incorporated into a part 70 permit that is not "federally enforceable" and would not meet the definition of an "applicable requirement" (e.g., a "state-only" requirement) need not be treated as a part 70 cost.[35] The matrixt guidance also clarifies that state-only requirements are air grant-eligibletactivities, rather than title V-eligible activities.

Costs of performing certain other activities related to applicable requirements.t Certain activities required bytthe Acttor its implementing regulations are not "applicable requirements" as defined in part 70 because they apply to the permitting authority rather than thetsource.[36] We refer to such activities ast "other activities." As such, questions often arisetas to whether the costs of "other activities" are part 70t costs, coststof the underlying standard, or coststoftthe preconstruction review permitting process.

Examples of applicable requirements associated with "other activities" include, but are not limited to, the following:

- t Emissions standards or other requirements for new sources under section 111(b) of the Act;t
- t Emissions standards or other requirements for existing sources under section 111(d) of the Act;t
- t Case-by-case maximum achievable control technology (MACT) standards that may be required under section 112 of the Act; andt
- t Activities required by a state, federal, or tribal implementation plan (SIP, FIP, or TIP), includingt section 110 of the Act.t

The 1993 fee schedule guidance stated that the cost for performing "other activities" would be part 70 costs only to the extent the activities are "necessary for part 70 purposes."[37] The 1993 fee schedulet guidance has resulted in numerous questions over the years as to the scope of the term "part 70 purposes." The EPA believes a clearer standard for determining when "other activities" must be included in part 70 costs would include an evaluation of: the extent to which the air agency is required to perform the "other activities" pursuant to part 70, title V, or the approved part 70 program; the extent to which the activity is performed to assure compliance with, or enforce, part 70 permit terms and conditions; or the extent to which a non-part 70 rule (e.g., a section 111 or 112 standard) requires the air agency to perform the activity in the part 70 permitting context. If an "other activity" does not meet any

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[34] *See* EPA memo, *Additional Guidance on Funding Support for State and Local Programs*, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, to Regional Administrators, Regions I–X, August 28, 1994.
[35] *See* 40 CFR § 70.6(b)(2).
[36] Although the "other activities" may originate within a federal standard or requirement that we generally refer to as an "applicable requirement" and the activities may result in an "applicable requirement," the activities themselves do not meet the definition of "applicable requirement" within 40 CFR § 70.2.
[37] See page 2 of the introductory memorandum for the 1993 fee schedule guidance.

of these criteria (e.g., a non-part 70 rule requires an activity in a non-part 70 context), it should not be included in part 70 costs.

Nonetheless, if any activity is an "applicable requirement" for a source, the applicable requirement must be included in a part 70 permit and the costs to the air agency of including it in the permit (and implementing and enforcing) must be treated as part 70 costs.[38]

For example, the cost of *incorporating* a standard (e.g., a section 111(b) standard) into a part 70 permit—where the task is merely one of copying the requirements from the regulation unchanged into a permit—would be a part 70 cost. However, the cost of *developing* a source-specific emission limitation outside the permit processing context (e.g., a standard pursuant to section 111(d) emission guidelines) would be a section 111 cost (although the cost of subsequently incorporating that standard into the part 70 permit would be a part 70 cost).

The costs of "other activities" related to implementation plans, including section 110 or 111 of the Act, should not be counted for part 70 purposes if the activities are required as part of the preconstruction review process or directly relate to implementation plan development, as required by title I of the Act.[39] On the other hand, part 70 costs can include ambient monitoring or emission inventories necessary to implement the part 70 program (e.g., development and quality assurance of emissions inventory for potential part 70 sources for the purpose of determining applicability).[40] If an air agency is unsure where to draw the line on including such activities in part 70 costs, they should contact the EPA for assistance.

General standard for EPA review of part 70 costs for a particular air agency. In general, the EPA expects that part 70 permit fees will fund the activities listed in this guidance. However, in evaluating a part 70 program, the EPA will consider the particular design and attributes of that program. Because the nature of permitting-related activities can vary across air agencies, the EPA evaluates each program individually. The activities listed in this guidance may not represent the full range of activities to be covered by permit fees.[41] Additionally, some air agencies may have further program needs based on the particularities of their own air quality issues and program structure.

Sections II.B through II.K of this guidance provide further information on specific permitting activities and the extent to which the costs of such activities must be treated as part 70 costs.

B. The Costs of Part 70 Program Administration

All part 70 program administration costs must be treated as part 70 costs.[42] Examples of program administration costs include:

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[38] *See* § 70.9(b)(1)(ii), (4).

[39] Implementation plan development is mandated under title I of the Act and costs typically include such activities as maintaining state-wide emissions inventories and performing ambient monitoring and emissions modeling of air pollutants for which national ambient air quality standards have been set.

[40] *See* the matrix guidance at page 1.

[41] The fee demonstration guidance cites various factors that may affect the types of activities included in a permit program and influence costs. *See* fee demonstration guidance at 4-5.

[42] This section includes many activities that would be categorized as part 70 costs under 40 CFR §§ 70.9(b)(1)(i)-(iii) that are not covered elsewhere in subsequent sections of this guidance and are necessary to conduct a part 70 program.

- Program infrastructure costs (e.g., development of part 70 regulations, implementation guidance, policies, procedures, and forms);

- Program integration costs (adapting to changes in related programs, such as NSR, section 112 programs, and other programs);

- Data system implementation costs (including data systems for submitting permitting information to the EPA, for permit program administration, implementation and tracking and to provide public access to permits or permit information);

- Costs to operate local or Regional offices for part 70, the costs of interfacing with other state, local, or tribal offices (e.g., briefing legislative or executive staff on program issues and responding to internal audits);

- Costs related to interfacing with the EPA (e.g., related to program oversight, including program evaluations, responding to public petitions, revising implementation agreements between the air agency and the EPA); and

- Activities similar to those above.

In addition, there are other program implementation costs, such as the costs of making determinations of which sources are subject to part 70 permitting requirements that must be treated as part 70 costs.[43] Examples of such activities include:

- Maintaining an inventory of part 70 sources (e.g., for enforcement of the requirement for sources to obtain a permit or for part 70 fee purposes);

- Costs of determining if an individual source is a major source (for applicability purposes);

- Costs of determining if a source qualifies for coverage under a general permit (if the air agency chooses to issue them); and

- Costs of determining if a non-major source is required to obtain a part 70 permit and costs of implementing any insignificant activity and emission level exemptions under part 70.

C. The Costs of Part 70 Program Revisions

All costs of revising an approved part 70 program must be treated as part 70 costs, including the costs of developing new program elements to respond to changes in requirements, whether the revisions are the air agency's own initiative or required by the EPA.[44] Examples of program revision costs include:

- Costs of revising the program elements that are changing (e.g., program legal authority, implementing regulations, data systems, and other program elements);

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[43] Many of these activities may also be described as related to reviewing and acting on applications for part 70 permits, as provided in 40 CFR § 70.9(b)(1)(ii).

[44] *See* 40 CFR § 70.4(i).

- Costs of documenting the changes; and

- Costs associated with obtaining the needed approvals, including for submitting program revisions to the EPA and any necessary follow-up work related to obtaining approval.

D. The Costs of Reviewing Applications and Acting on Part 70 Permits

All costs of reviewing an application for a part 70 permit, developing applicable requirements as part of the process of a permit, and ultimately acting upon the application must be treated as part 70 costs.[45] These costs must include the costs of the application completeness determination, the technical review of the application (including the review of any supplemental monitoring that may be needed, review of any compliance plans, compliance schedules, and review of initial compliance certifications included in the application), drafting permit terms and conditions to reflect the applicable requirements that apply to the source, determining if any permit shields apply, public participation, the EPA and affected air agency review, and issuing the permit. The cost of these activities must be included for initial permit processing, permit renewal, permit reopening, and permit modification.

The costs of developing part 70 permit terms and conditions. All costs associated with the development of permit terms and conditions to reflect the "applicable requirements," including the costs of incorporating such terms in part 70 permits, must be treated as part 70 costs. The applicable requirements include the emissions limitations and standards and other requirements as provided for in the definition of applicable requirements in 40 CFR § 70.2. Such costs may include the costs to determine the provisions of the applicable requirements that specifically apply to the source, to develop operational flexibility provisions, netting/trading conditions, and appropriate compliance conditions (e.g., inspection and entry, monitoring and reporting). Appropriate compliance provisions may include periodic monitoring and testing under 40 CFR § 70.6(a)(3)(i)(B) and monitoring sufficient to assure compliance under 40 CFR § 70.6(c)(1).

Part 70 also requires certain regulatory provisions to be included in permits, such as citation to the origin and authority of each permit term, a statement of permit duration, requirements related to fee payment, certain part 70 compliance and reporting requirements, a permit shield (if provided by the air agency), and similar terms. The costs of developing such terms must be covered by permit fees.[46]

The costs of developing "state-only" permit terms need not be treated as part 70 costs. Air agencies should screen or separate "state-only" requirements from federally-enforceable requirements and—while the act of separating part 70 terms from state-only terms should be treated as part 70 costs—the costs of developing state-only permit terms, putting them in the part 70 permit, and implementing and enforcing them as they appear in the part 70 permit need not be treated as part 70 costs for fee purposes.[47]

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[45] *See* CAA section 502(b)(3)(A)(i); 40 CFR § 70.9(b)(1)(ii).
[46] *See* 40 CFR § 70.6.
[47] *See* the matrix guidance, which notes that state-only requirements in part 70 permits are air-grant-eligible activities, rather than title V-eligible activities.

The costs of public participation and review (by the EPA and the affected air agency): All costs of notices (or transmitting information) to the public, affected air agencies and the EPA for part 70 permit issuance, renewal, significant modifications and (if required by state or local law) for minor modifications (including staff time and publication costs) must be treated as part 70 costs.[48]

Any costs associated with hearings for part 70 permit issuance, renewal, significant modifications, and for minor modifications (if required by state or local law), including preparation, administration, response, and documentation, must be treated as part 70 costs.

All costs for the air agency to develop and provide a response to public comments received during the public comment period must be treated as part 70 costs.

Any costs associated with transmitting necessary documentation to the EPA for review and response to an EPA objection must be treated as part 70 costs.[49] Also, the costs associated with an air agency's response to an EPA order granting objection to a part 70 permit and/or the costs of defending challenges to part 70 permit terms in state court must be treated as part 70 costs.

E. The Costs of Implementation and Enforcement of Part 70 Permits

With some exceptions related to court costs and enforcement actions, the costs of implementing and enforcing the terms of any part 70 permit must be treated as part 70 program costs.[50] Implementation and enforcement of permit terms and conditions related to part 70 includes requirements for compliance plans, schedules of compliance, monitoring reports, deviation reports, and annual certifications.

The costs of any follow-up activities when compliance/enforcement issues are encountered should be treated as part 70 costs. Part 70 costs include such activities as conducting site visits, stack tests, inspections, audits, and requests for information either before or after a violation is identified (e.g., requests similar to the EPA's CAA section 114 letters).

Part 70 costs should include the costs for any notices, findings, and letters of violation, and the development of cases and referrals up until the filing of the complaint or order. Excluded from permit costs are enforcement costs incurred after the filing of an administrative or judicial complaint.[51]

Part 70 costs must also include the costs of implementing and enforcing any restrictions on potential to emit (PTE) that are included in a part 70 permit, whether they originate in the part 70 permit or were transferred from a non-part 70 permit, such as a minor NSR permit for a "synthetic minor source."

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[48] *See* 40 CFR § 70.7(h) concerning public participation and 40 CFR § 70.8 concerning the EPA and affected air agency review.
[49] *See* 40 CFR § 70.8(a).
[50] *See* 40 CFR §§ 70.4(b), 70.6, 70.9(b)(1)(iv), and 70.11.
[51] *See* the matrix guidance at page 8.

F. The Costs of Implementing and Enforcing the Requirements of Non-Title V Permits Required Under the Act

Part 70 fees must cover the costs of implementing and enforcing the terms and conditions of "other permits" (non-part 70 permits) required under the Act, such as preconstruction review permits under title I, that have been incorporated in part 70 permits as "applicable requirements."[52]

Also, the costs of implementing and enforcing the terms and conditions of consent decrees and orders that originate in a non-part 70 permit that are incorporated into a part 70 permit must be treated as part 70 costs. *See* Section II.A of this guidance.

The costs of implementing and enforcing applicable requirements for "prospective part 70 sources" need not be treated as part 70 costs until such time as the source submits a timely and complete permit application and pays fees. In addition, the costs of implementing and enforcing "state-only" requirements need not be treated as part 70 costs.

G. The Costs of Performing Certain "Other Activities" Related to Applicable Requirements

Certain activities are required by the Act but are not "applicable requirements" because they apply to the permitting authority, rather than the source; such activities are referred to as "other activities."[53] Examples of applicable requirements that contain these activities include, but are not limited to, standards for existing sources under section 111(d) of the Act; case-by-case MACT under sections 112 of the Act; and certain activities required by a SIP, FIP, or TIP, including section 110 of the Act. The costs of other activities must be treated as part 70 costs, if the air agency is required to perform the activities by part 70, title V, or the air agency's approved part 70 program; if a non-part 70 rule requires them to be performed in the part 70 permitting context; or if the activities are needed to assure compliance with, or to enforce, the terms and conditions of a part 70 permit. The costs of other activities should not be treated as part 70 costs, if they do not meet any of these criteria (e.g., a non-part 70 rule requires an activity that occurs in a non-part 70 context). *See* Section II.A of this guidance.

H. The Costs of Revising, Reopening, and Renewing Part 70 Permits

All costs associated with processing permit revisions, including for administrative amendments, minor modifications (fast-track and group processing), and significant modifications, must be treated as part 70 costs.[54] The part 70 costs must include all the costs of reviewing and acting on the application, as well as implementing and enforcing the revised permit terms.[55] The costs of implementing any "operational flexibility provisions"[56] approved into a program to streamline permit revision procedures must be treated as permit program costs (this may also generally be considered to be one of the costs of implementing a permit).

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[52] Required to be treated as part 70 costs in certain cases by 40 CFR § 70.9(b)(1)(iv).

[53] Required to be treated as part 70 costs in certain cases by 40 CFR §§ 70.9(b)(1)(ii) and (iv).

[54] Required to be treated as part 70 costs under 40 CFR § 70.9(b)(1)(ii). Also *see* 40 CFR § 70.7 for more on permit issuance, renewal, reopening and revision procedures.

[55] 40 CFR §§ 70.9(b)(1)(ii) and (iv).

[56] Section 502(b)(10) of the Act requires the operating permit regulations to include provisions to allow changes within a permitted facility without requiring a permit revision under certain circumstances. The EPA refers to these provisions as "operational flexibility provisions." *See* 40 CFR § 70.4(b)(12).

The cost for the air agency to reopen a part 70 permit for cause must be treated as part 70 costs. The proceedings to reopen a permit shall follow the same procedures that apply to initial permit issuance, and include a requirement for the air agency to provide a notice to the source of the agency's intent to reopen the permit.

When the EPA reopens a part 70 permit for cause, the air agency's costs for the proposed determination of termination, modification, or revocation and reissuance, and the costs to resolve the objection in accordance with the EPA's objection, must be treated as part 70 costs.

The cost of renewing permits every 5 years, which involves the same procedural requirements, including public participation, and the EPA and affected air agency review, must be treated as part 70 costs,[57] just as for initial permit issuance.

I. The Costs of General and Model Permits

All costs for development and implementation of general and model permits under part 70 must be included in part 70 program costs, including the costs of drafting permits, public participation, the EPA review and any affected air agency's review, permit issuance, publication, assessing applications for coverage under the general permit, and other related costs.[58] Note that the issuance of general and model permits is an option for air agencies, but if such permits are issued by an air agency under part 70, the costs must be included in part 70 costs.

J. The Costs of the Portion of the Small Business Assistance Program (SBAP) Attributable to Part 70 Sources

The SBAP under title V is authorized to provide counseling to help small business stationary sources to determine and meet their obligations under the Act.[59] The SBAP is authorized to provide assistance to small business stationary sources, as defined by CAAt§ 507(c)(1), under the preconstruction and operating permit programs; however, air agencies need only to include costs related to assistance with part 70 in part 70 costs.[60] *See* 40 CFR § 70.9(b)(1)(viii). Allowable costs for part 70 include the costs to establish a small business ombudsman program to provide information on the applicability of part 70 to sources, available assistance for part 70 sources, the rights and obligations of part 70 sources, and options for sources subject to part 70. Allowable costs also include the costs associated with part 70 applicability determinations.

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[57] 40 CFR § 70.9(b)(1)(ii).

[58] Required to be included in part 70 costs by 40 CFR §§ 70.9(b)(1)(ii) and (iv). Also *see* 40 CFR § 70.6(d) for more on the administration of general permits.

[59] For examples of the types of activities of a SBAP that could be attributable to part 70 sources and funded by part 70 fees, see *Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants*, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, to Regional Administrators, Regions I – X, July 21, 1994 ("transition guidance"); Letter from Conrad Simon, Director, Air & Waste Management Division, EPA Region II to Mr. Billy J. Sexton, Director, Jefferson County Department of Planning and Environmental Management, Air Pollution Control District, Louisville, Kentucky, January 23, 1996 ("Sexton memo").

[60] Note that the preconstruction review permitting costs of assisting non-part 70 sources should generally not be included as part 70 costs, except for costs related to implementation and enforcement of permit terms from a preconstruction review permit that have been included in a part 70 permit.

Part 70 costs for SBAP must include the costs for outreach/publications on the requirements of part 70 and/or the applicable requirements included in part 70 permits, the costs of assisting part 70 sources through a clearinghouse on compliance methods and technologies, including pollution prevention approaches, and the costs to assist sources with part 70 permitting, which may include the portion of costs for a small business compliance advisory panel that are related to part 70.

K. The Costs of Permit Fee Program Administration

All costs associated with the administration of an air agency's part 70 fee program must be included in part 70 costs, including the costs for revising fee schedules (as needed to cover all required costs), periodic updates, detailed accounting (if needed), determining the presumptive minimum for the air agency, participating in EPA evaluations of fee programs or similar EPA oversight activities, assisting sources with fee issues, auditing fee payment by sources, assessing penalties for fee payment errors, responding to internal audits and inquiries, and similar activities.[61]

III. Flexibility in Fee Schedule Design

An air agency may design its fee schedule to collect fees from sources using various methods, provided the fee structure raises sufficient revenue to cover all required program costs.[62] Thus, air agencies may charge: emissions-based fees based on actual emissions or allowable emissions; fixed fees for certain permit processes (different fees for initial permit review, renewals, or for various types of permit revisions); different fee rates (e.g., dollars per ton of emissions) for certain air pollutants; fees reflecting the actual costs of services for sources (such as charging for time and materials for a review); or other types of fees, including any combination of such fees. Finally, air agencies may charge annual fees or fees covering some other period of time.

This flexibility for fee schedule design is available without regard to whether the air agency has set its fees to collect above or below the presumptive minimum. Many air agencies have designed their fee schedules to collect fees using an emissions-based approach that mirrors the approach of part 70 for determining the presumptive minimum program cost for an air agency.[63] However, air agencies are not required to charge fees to sources in that manner, and it is possible that such an approach may not necessarily result in fees that would be sufficient to cover all part 70 program costs.

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[61] *See* 40 CFR § 70.9(b)(l)(ii); *Overview of Clean Air Title V Financial Management and Reporting – A Handbook for Financial Managers*, Environment Finance Center, University of Maryland, Maryland Sea Grant College, University of Maryland. Supported by a grant from the U.S. EPA, January 1997 ("Financial Manager's Handbook") (providing an overview of air agency application of general government accounting, budgeting, and financial reporting concepts to the part 70 program).

[62] *See* 40 CFR § 70.9(b)(3).

[63] *See* 40 CFR § 70.9(b)(2)(i).

IV. The EPA Review of Existing Air Agency Fee Programs

The initial program submittals involved review of data on expected fee revenue, program costs and accounting practices that were prospective in nature, since little or no data would have been available on actual fees or costs at that time.

At this point, the EPA review of air agency fee programs generally focuses on a review of actual data on fee revenue, program costs, and review of existing accounting practices. The EPA oversight of existing fee programs will also likely be conducted as part of a program evaluation, a separate fee evaluation, or through submittal of any periodic updates or detailed accountings related to fee demonstration requirements. The EPA has issued a separate memorandum and guidance on part 70 program and fee evaluations concurrently with this updated fee schedule guidance.[64]

Fee evaluations for existing part 70 programs will generally focus on certain key requirements of the Act and part 70 for fees discussed in Section I, *General Principles for Review of Title V Fee Schedules*, of this guidance. Such reviews may cover certain aspects of air agency accounting practices and procedures related to fees, particularly fee assessment procedures, tracking of fee collection and revenue uses (including transfers in and out of part 70 program accounts), whether all part 70 costs are included in the air agency's accounting of costs, and potentially other accounting aspects.

A fee evaluation may include a review of an air agency's fee program status with respect to the presumptive minimum defined in 40 CFR § 70.9(b)(2). This may be important in cases where a part 70 program was initially approved to charge above the presumptive minimum, in order to determine if the air agency is now charging less than the presumptive minimum. This is relevant because 40 CFR § 70.9(b)(5)(i) requires an air agency to submit a detailed accounting to show that its fees would be adequate to cover the program costs if the air agency charges less than the presumptive minimum. This requirement is ongoing (not restricted to program submittals).

In addition, the EPA revised the part 70 requirements related to calculating the presumptive minimum to add a "GHG cost adjustment" in an October 23, 2015, final rule.[65] Although the EPA has announced a review of this final rule (82 FR 16330, April 4, 2017), the EPA has not proposed any specific changes to the "GHG cost adjustment." Because air agencies are required to collect sufficient fees to cover the costs of implementing their operating permit programs, they may still use the "GHG cost adjustment" (as applicable) in calculating the fees owed to reflect the associated administrative burden of considering GHGs in the permitting process. The "GHG cost adjustment" is designed to cover the overall added administrative burden of adding GHGs to the permitting program in a general sense.

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[64] *Program and Fee Evaluation Strategy and Guidance for Part 70*, Peter Tsirigotis, Director, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018.

[65] The "GHG cost adjustment" was promulgated as part of an October 23, 2015, final rule titled, *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units*, 80 FR 64510. Specifically, see Section XII.E. "Implications for Title V Fee Requirements for GHGs" at page 64633. *See also* 40 CFR §§ 70.9(b)(2)(v) and (d)(3)(viii).

"Presumptive Minimum" Calculation

1. **Calculate the "Cost of Emissions."** The calculation is based on multiplying the actual emissions of "fee pollutants"[66] (tons) from the air agency's part 70 sources for a preceding 12-month period by the "presumptive minimum fee rate"[67] ($/ton) that is in effect at the time the calculation is performed.

   Air agencies may exclude the following types of fee pollutants from the calculation:
   - Actual emissions of each regulated fee pollutant in excess of 4,000 tons per year on source-by-source basis.[68]
   - Actual emissions of any regulated fee pollutant emitted by a part 70 source that was already included in the presumptive minimum fee calculation (i.e., double-counting of the same pollutant is not required).[69]
   - Insignificant quantities of actual emissions not required in a permit application pursuant to 40 CFR § 70.5(c).[70]

2. **Calculate the "GHG Cost Adjustment" (as applicable)**[71] The "GHG cost adjustment" is the cost for the air agency to conduct certain application reviews (activities) to determine if GHGs have been properly addressed for an annual period. The adjustment is calculated by multiplying the total hours to conduct the activities (burden hours) by the average cost of staff time ($/hour) to conduct the activities.

   To calculate the total hours for the air agency to conduct the activities, multiply the number of activities performed in each category listed in the following table by the corresponding "burden hours per activity factor," and sum the results.[72]

Table 1. GHG reviews counted for GHG cost adjustment purposes

Activity	Burden Hours per Activity Factor
GHG completeness determination (for initial permit or updated application)	43
GHG evaluation for a permit modification or related permit action	7
GHG evaluation at permit renewal	10

[66] The term "fee pollutants" used here is shorthand for "regulated pollutants (for presumptive fee calculation)," as defined in 40 CFR § 70.2.

[67] The "presumptive minimum fee rate" is calculated by the EPA in September of each year and is effective from September 1 to August 31 of the following year. The fee rate is adjusted annually for changes in the Consumer Price Index (CPI) and is published on the following Internet site: *https://www.epa.gov/title-v-operating-permits/permit-fees.*

[68] *See* 40 CFR § 70.9(b)(2)(ii)(B).

[69] *See* 40 CFR § 70.9(b)(2)(ii)(C). For example, a source may emit an air pollutant that is defined as both a hazardous air pollutant and a pollutant for which a national ambient air quality standard has been established, e.g., a volatile organic compound. The actual emissions of such a pollutant is not required to be counted twice for fee purposes.

[70] *See* 40 CFR § 70.9(b)(2)(ii)(D).

[71] *See* 40 CFR §§ 70.9(b)(2)(i) and (v).

[72] The table shown here is found at 40 CFR § 70.9(b)(2)(v).

To determine the GHG cost adjustmentt($), the total hours to conduct the reviews (calculated above) is multiplied by the average cost of staff time ($/hour). The average cost of staff time must include wages, employee benefits, and overhead and will be unique to the air agency. The average cost may be known for the air program or may be available from the air agency budget office or accounting staff.

3. **Calculate the Total Presumptive Minimum.** The total presumptive minimumt($) for the annual period is determined by adding the "cost of emissions" (determined in Step 1) and the "GHG cost adjustment," as applicable (determined in Step 2).

See Attachment B, *Example Presumptive Minimum Calculation*, for an example calculation for a hypothetical air agency that incorporates the "GHG cost adjustment."

V. Future Adjustments to Fee Schedules

Air agencies must collect part 70 fees that are sufficient to cover the part 70 permit program costs.[73] Accordingly, air agencies may need to revise fee schedules periodically to remain in compliance with the requirement that permit fees cover all part 70 permit program costs. Changes in costs over time may be due to many factors, including but not limited to: changes in the number of sources required to obtain part 70 permits; changes in the types of permitting actions being performed; promulgation of new emission standards; and minor source permitting requirements for CAA sections 111, 112, or 129 standards. Air agencies should keep the EPA Regions apprised of any changes to fee schedules over time. The EPA will assess the proposed revision and determine whether it must be processed by the EPA as a substantial or non-substantial revision. As part of this process, the EPA may request additional information, as appropriate.

[73] 40 CFR § 70.9(a).

ATTACHMENT A

List of Guidance Relevant to Part 70 Fee Requirements

EPA Guidance on Part 70 Requirements:

- January 1992 – *Guidelines for Implementation of Section 507 of the Clean Air Act Amendments—Final Guidelines,* Office of Air Quality Planning and Standards (OAQPS), U.S. EPA. *See* pages 5 and 11-12 concerning fee flexibility for small business stationary sources: *http://www.epa.gov/sites/production/files/2015-08/documents/smbus.pdf.*

- July 7, 1993 – *Questions and Answers on the Requirements of Operating Permits Program Regulations*, U.S. EPA. See Section 9: *http://www.epa.gov/sites/production/files/2015-08/documents/bbrd_qal.pdf.*

- August 4, 1993 – *Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs under Title V*, John S. Seitz, Director, OAQPS, U.S. EPA, to Air Division Directors, Regions I-X ("1993 fee schedule guidance"). Note that there was an earlier document on this subject that was superseded by this document: *http://www3.epa.gov/ttn/naaqs/aqmguide/collection/t5/fees.pdf.*

- August 9, 1993 – *Acid Rain Title V Guidance on Fees and Incorporation by Reference,* Brian J. McLean, Director, Acid Rain Division, U.S. EPA, to Air, Pesticides, and Toxics Division Directors, Regions I, IV, and VI, Air and Waste Management Division Director, Region II, Air and Toxics Division Directors, Regions III, VII, VIII, IX and X and Air and Radiation Division Director, Region V: *http://www.epa.gov/sites/production/files/2015-08/documents/combo809.pdf.*

- September 23, 1993 – *Matrix of Title V-Related and Air Grant Eligible Activities*, OAQPS, U.S. EPA ("matrix guidance"). The matrix notes that it is to be "read and used in concert with the August 4, 1993, fee [schedule] guidance": *http://www.epa.gov/sites/production/files/2015-08/documents/matrix.pdf.*

- October 22, 1993 – *Use of Clean Air Act Title V Permit Fees as Match for Section 105 Grants,* Gerald M. Yamada, Acting General Counsel, U.S. EPA, to Michael H. Shapiro, Acting Administrator, Office of Air and Radiation, U.S. EPA: *https://www.epa.gov/sites/production/files/2015-08/documents/usefees.pdf.*

- November 01, 1993 – *Title V Fee Demonstration and Additional Fee Demonstration Guidance.* John S. Seitz, Director, OAQPS, U.S. EPA, to Director, Air, Pesticides and Toxics Management Division, Regions I and IV, Director, Air and Waste Management Division, Region II, Director, Air, Radiation and Toxics Division, Region III, Director, Air and Radiation Division, Region V, Director, Air, Pesticides and Toxics Division, Region VI and Director, Air and Toxics Division, Regions VII, VIII, IX and X, U.S. EPA ("fee demonstration guidance"): *http://www3.epa.gov/ttn/naaqs/aqmguide/collection/t5/feedemon.pdf.*

- July 21, 1994 – *Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants,* Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, to Regional Administrators, Regions I – X ("transition guidance"): *http://www.epa.gov/sites/production/files/2015-08/documents/grantmem.pdf.*

- August 28, 1994 – *Additional Guidance on Funding Support for State and Local Programs*, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, to Regional Administrators, Regions 1 – X ("additional guidance memo"): *http://www.epa.gov/sites/production/files/2015-08/documents/guidline.pdf.*

- January 25, 1995 – *Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)*, John S. Seitz, Director for Office of Air Quality Planning and Standards, U.S. EPA, to Regional Directors, Regions I – X: *https://www.epa.gov/sites/production/files/documents/limit-pte-rpt.pdf.*

- January 23, 1996 – Letter from Conrad Simon, Director, Air & Waste Management Division, EPA Region II to Mr. Billy J. Sexton, Director, Jefferson County Department of Planning and Environmental Management, Air Pollution Control District, Louisville, Kentucky ("Sexton memo"): *https://www.epa.gov/sites/production/files/2016-04/documents/sexton_1996.pdf.*

- January 1997 – *Overview of Clean Air Title V Financial Management and Reporting – A Handbook for Financial Managers*, Environment Finance Center, University of Maryland, Maryland Sea Grant College, University of Maryland. Supported by a grant from the U.S. EPA ("financial manager's handbook"): *http://www.epa.gov/sites/production/files/2015-08/documents/t5finance.pdf.*

- October 23, 2015 – *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units: Final Rule* (80 FR 64510). *See* Section XII.E, "Implications for Title V Fee Requirements for GHGs" at page 64633: *http://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf.*

Guidance on Governmental Accounting Standards Relevant to Part 70:

- Handbook of Federal Accounting Standards and Other Pronouncements, as Amended, as of June 30, 2015, Federal Accounting Standards Advisory Board (FASAB). *http://www.fasab.gov/pdffiles/2015_fasab_handbook.pdf.*

- Statement of Federal Financial Accounting Standards 4: *Managerial Cost Accounting Standards and Concepts*, page 396 of the FASB Handbook ("SFFAS No. 4").

- Statement of Federal Financial Accounting Standards 7: Accounting for Revenue and Other Financial Sources and Concepts for Reconciling Budgetary and Financial Accounting, page 592 of the FASAB Handbook ("SFFAS No. 7").

Statements of the Governmental Accounting Standards Board (GASB):

- Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998) ("GASB Statement No. 33"): *http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029148&acceptedDisclaimer=true.*

- Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments* (June 1999) ("GASB Statement No. 34"): *http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029121&acceptedDisclaimer=true.*

ATTACHMENT B

Example Presumptive Minimum Calculation

This attachment provides an example calculation of the "presumptive minimum" under 40 CFR part 70 for a hypothetical air agency ("Air Agency X").[1]

Background:

- The "presumptive minimum" is an amount of fee revenue for an air agency that is presumed to be adequate to cover part 70 costs.[2]
  - If an air agency's fee schedule would result in fees that would be less than the presumptive minimum, there is no presumption that its fees would be adequate to cover part 70 costs and the air agency is required to submit a "detailed accounting" to show that its fees would be sufficient to cover its part 70 costs.[3]
  - If an air agency's fee schedule would result in fees that would be at least equal to the presumptive minimum, there is a presumption that its fees would be adequate to covert costs and a "detailed accounting" is not required. However, a "detailed accounting" is required whenever the EPA determines, based on comments rebutting the presumption oft fee adequacy or on the EPA's own initiative, that there are serious questions regarding whether its fees are sufficient to cover part 70 costs.[4]
- In addition, independent of the air agency's status with respect to the presumptive minimum, at "detailed accounting" is required whenever the EPA determines on its own initiative that theret are serious questions regarding whether an air agency's fee schedule is sufficient to cover its partt 70 costs. This is required because part 70 requires an air agency's fee revenue to be sufficient to cover part 70 permit program costs.[5]
- The quantity of air pollutants and the "GHG cost adjustment" are unique to each air agency andt vary from year-to-year. As a result, the presumptive minimum calculated for an air agency ist also unique to that particular agency on a year-to-year basis.t
- No source should use the presumptive minimum calculation described in this attachment to calculate its part 70 fees.[6] Sources should instead contact their air agency for more informationt on how to calculate fees for a source.t

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[1] The example calculation follows the requirements of 40 CFR § 70.9(b)(2)(i)-(v).t
[2] *See* 40 CFR § 70.9(b)(2)(i).
[3] *See* 40 CFR § 70.9(b)(5) (concerning the "detailed accounting" requirement).
[4] *See* 40 CFR § 70.9(b)(5)(ii).
[5] *See* 40 CFR §§ 70.9(a) and (b)(1).
[6] *See* 40 CFR § 70.9(b)(3) (providing air agencies with flexibility on how they charge fees to individual sources).

- An air agency may calculate the presumptive minimum in several circumstances:

    - As part of a fee demonstration submitted to the EPA when an air agency sets its fee schedule to collect at or above the presumptive minimum.

    - As part of a fee evaluation to determine if an air agency with a fee schedule originally approved to be at or above the presumptive minimum now results in fees that are below the current presumptive minimum. When this occurs, the air agency is required to submit a "detailed accounting" to show that its fee schedule will be sufficient to cover all required program costs. Such a change in the presumptive minimum for an air agency may occur for many reasons over time.[7]

    - To update the presumptive minimum amount for the air agency to account for changes that have occurred since the calculation was last performeda A common reason for an air agency to do this is to recalculate the amount to add the GHG cost adjustment.[8]

The presumptive minimum calculation is generally composed of three steps:

1. *Calculation of the "cost of emissions."* "aThe "cost of emissions" is proportional to the emissions of certain air pollutants of part 70 sources.

2. *Calculation of the "GHG cost adjustment" (as applicable).* The "GHG cost adjustment," promulgated in October 23, 2015, is intended to recover the costs of incorporating GHGs into the permitting program.

3. *Sum the values calculated in Steps 1 and 2.*

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[7] It has been almost two decades since most part 70 programs were approved. Changes may have occurred since then that would affect the presumptive minimum calculation for an air agency. For example, changes in the emissions inventory for part 70 sources or changes to air agency fee schedules. The part 70 rules were also revised in 2015 to add a "GHG cost adjustment" to the calculation of the presumptive minimum fee.

[8] *See* 80 FR 64633 (October 23, 2015); 40 CFR § 70.9(b)(2)(v).

Example Scenario and Calculation:

Air Agency X performs its presumptive minimum calculation in November of 2016 using data for Fiscal Year 2016 (FY16 or October 1, 2015, through September 30, 2016).

Step 1 – Calculate the Cost of Emissions:

The "cost of emissions" is determined by multiplying the air agency's inventory of actual emissions of certain pollutants from part 70 sources ("fee pollutants") by an annual fee rate determined by the EPA.

A. Determine the Actual Emissions of "Fee Pollutants" for a 12-month Period Prior to the Calculation.

Note that the term "fee pollutants" used here is shorthand for "regulated pollutants (for presumptive fee calculation)," a defined term in part 70,[9] which includes air pollutants for which a national ambient air quality standard has been set, hazardous air pollutants, and air pollutants subject to a standard under section 111 of the Act, excluding carbon monoxide, greenhouse gases, and certain other pollutants.[10] Note that any preceding 12-month period may be used, for example, a calendar year, a fiscal year, or any other period that is representative of normal source operation and consistent with the fee schedule used by the air agency.

For example, a review of Air Agency X's emissions inventory records for part 70 sources for the 12-month period (FY16) indicates that the actual emissions of "fee pollutants" were 15,700 tons.

Total "Fee Pollutants"t= 15,700 tons for FY16

B. Determine the Presumptive Minimum Fee Rate ($/ton) Effective at the Time the Calculation is Performed.

The presumptive minimum fee rate is updated by the EPA annually and is effective from September 1 until August 31 of the following year. Historical and current fee rates are available online: *https://www.epa.gov/title-v-operating-permits/permit-fees.* The fee rate used in the calculation is the one that is effective on the date the calculation is performed, rather than the fee rate in effect for the annual period of the emissions data.

For example, Air Agency X calculates its "presumptive minimum" for FY16 in November 2016. The air agency first refers to the EPA website (listed above) to find the fee rate effective for November 2016. This fee rate ($48.88) is used in the next step to calculate the cost of emissions.

Presumptive Minimum Fee Rate ($/ton) = $ 48.88 per ton.

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[9] The definition of "regulated pollutant (for presumptive fee calculation)" is found at 40 CFR § 70.2.

[10] Note that 40 CFR §§ 70.9(b)(2)(ii) and (iii) provides exclusions for certain air pollutants and includes a definition of "actual emissions."

C.a Calculate the Cost of Emissions.a

Calculate the cost of emissions by multiplying the total tonstof "fee pollutants" (value found int A)tby the presumptive minimum fee rate (value found intB).t

Cost of Emissionst= "Fee Pollutants" (tons) * Presumptive Minimum Fee Rate ($/ton)
= 15,700 tonst* $48.88/ton
= $767,416

Value Calculated in Step 1: Cost of Emissionsa= $767,416

Step 2 – Calculate the GHG Cost Adjustment (as applicable):
The "GHG cost adjustment" is the cost for the air agency to review applications for certain permitting actions to determine if GHGs have been properly addressed.

A.a Determine the Number of GHG Activities for Each Activity Category.a

Determine the total number of activities processed during the period for each activity category listed in the following table [based on table at 40 CFR § 70.9(b)(2)(v)].

Activity	Burden Factor (hours per activity)
GHG Completeness Determinations (for initial permit or updated application)	43
GHG Evaluations for Permit Modification or Related Permit Actions	7
GHG Evaluations at Permit Renewal	10

For example, Air Agency X's records were reviewed to determine the number of activities that occurred for each activity category during FY16:

- 2 GHG completeness determinations for initial applicationst
- 46 GHG evaluations for permit modifications or related actions *(11 significant modifications and 35 minor modifications)*
- 20 GHG evaluations at permit renewalt

Note that the activities above are assumed to occur for each initial application, permit modification, or permit renewal, regardless of whether the source emits GHGs or is subject to applicable requirements for GHGs. Thus, there were 20 GHG evaluations at permit renewal because there were 20 permit renewals.

B. Calculate the GHG Burden for Each Activity Category.

The GHG burden for each activity category is calculated by multiplying the number of activities for each category (identified in A) by the relevant burden factor (hours/activity) listed in the table above.

GHG Burden = Number of activities * Burden factor (hours/activity)

For example, Air Agency X calculated GHG burden as follows:

- 2 Completeness Determinations * 43 hours/activity = 86 hours
- 46 Evaluations for Mods or Related Actions * 7 hours/activityt= 322 hours
- 20 Evaluations at Permit Renewal * 10 hours/activity = 200 hours

C. Calculate the Total GHG Burden (in hours).

The total GHG burden hours are calculated by summing the GHG burden hours for each activity category determined in B.

For example, Air Agency X calculated total GHG burden hours as follows:
Total GHG Burden Hours = 86 hours + 322 hours + 200 hours
= 608 hours

D. Calculate the GHG Cost Adjustment.

Calculate the GHG cost adjustment for the period by multiplying the total GHG burden hours (value calculated in C) by the cost of staff time.

GHG Cost Adjustmentt= Total GHG burden hours (hours)t* Cost of staff time ($/hour)

For example, Air Agency X's budget office reported that the average cost of staff time for the Department of Natural Resources (including wages, benefits, and overhead) for FY16 was $56/hour.

GHG Cost Adjustmentt= Total GHG burden hourst* Cost of staff time
= 608 hours * $56/hour
= $34,048

Value Calculated in Step 2: GHG Cost Adjustmenta= $34,048

Step 3 – Calculate the Total Presumptive Minimum:

Calculate the total for the period by adding the cost of emissions (value calculated in Step 1) and the GHG cost adjustment, as applicable (value calculated in Step 2).

Presumptive minimumt= Cost of emission ($) + GHG cost adjustmentt($)
= $767,416 + $34,048
= $801,464

TotalaPresumptive Minimum=a$801,464

Conclusion:a

$801,464 is the Air Agency X's presumptive minimum for FY16. Thistvalue would be compared against the total part 70 fee revenue for the same period to determine if the total fee revenue istgreater than or lessthan the presumptive minimum.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

May 25, 2023

MEMORANDUM

SUBJECT: Fee Evaluation and Oversight Guidance for 40 CFR Part 70

FROM: Scott Mathias, Director
Air Quality Policy Division

TO: Regional Air Division Directors, Regions 1 – 10

The attached guidance is being issued as a supplement to the Environmental Protection Agency's prior guidance titled *Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70*[1] in response to the EPA Office of Inspector General's (OIG) 2022 report regarding the need to address ongoing state, local, and tribal[2] program fee issues and improve oversight of fee practices and evaluations under title V of the Clean Air Act (CAA or Act).[3] Specifically, this guidance reflects EPA's commitment to the OIG in response to the OIG's Recommendations 3 and 4 to "update the EPA's guidance documents to require regions to establish time frames for permitting authorities to complete corrective actions in program and fee evaluation reports and clear, escalating consequences if timely corrective actions are not completed" and "update the Clean Air Act Title V guidance documents to establish criteria for when regions must conduct Title V fee evaluations and require a minimum standard of review for fee evaluations."[4] This document identifies best practices and guidance on EPA oversight of air agency fee programs, particularly expectations for title V program and fee evaluations and corrective actions resulting from those evaluations.

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[1] *Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70*, Memorandum from Peter Tsirigotis, Director Office of Air Quality Planning and Standards, to Regional Air Division Directors, March 27, 2018 ("2018 Part 70 Fee Evaluation Guidance"). *https://www.epa.gov/sites/default/files/2018-03/documents/fee_eval_2018.pdf*.
[2] As used herein, the term "permitting authority" refers to state, local, and tribal agencies.
[3] *EPA's Title V Program Needs to Address Ongoing Fee Issues and Improve Oversight*, U.S. EPA Office of the Inspector General. Report No. 22-E-0017. January 12, 2022 ("OIG Report").
[4] *Id*. at 14, 19.

Attachment

Supplement to EPA's Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70 Guidance

I. Summary of Title V Requirements for Air Agencies

A. General Program Requirements

Title V of the CAA of 1990 establishes an operating permit program for major sources of air pollutants, as well as some other sources.[5] EPA promulgated regulations under 40 CFR part 70 (part 70), consistent with title V of the Act, to establish the minimum elements for operating permit programs to be administered by permitting authorities. Air agencies with approved permit programs under part 70 must comply with minimum permit program requirements, such as reviewing application forms, adhering to certain permit processing procedures (including timeframes), ensuring certain permit content, collecting fees sufficient to fund the program, providing for public participation and EPA review of individual permits, and supplementing permits with compliance provisions (when needed), among other requirements.[6,7]

B. Summary of Title V Fee Requirements

The following is a summary of the fee requirements that will guide EPA reviews of permitting authority programs:

- Permit fees must be paid by "part 70 sources,"[8] the permit fees must cover all "reasonable (direct and indirect) costs required to develop and administer" the permit program (e.g., the permit fees must be sufficient to at least cover the total permit program costs).[9]

- Any fee required by part 70 must "be used solely for permit program costs" – in other words, required permit fees may not be diverted for non-part 70 purposes.[10] Nothing in part 70 restricts air agencies from collecting additional fees beyond the minimum amount needed to cover part 70 program cost; however, all fees (including surplus fees collected) must be used for part 70 purposes.

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[5] *See* CAA §§ 501-507; 42 U.S.C. §§ 7661-7661f.
[6] *See* 40 CFR §§ 70.1(a) and 70.4.
[7] EPA has issued guidance on Small Business Technical Assistance Program activities that should be covered by part 70 fees as well as potential activities that could be covered by part 70 fees. *See* EPA's 1995 memo *Use of Title V Emission Fees for Small Business Activities* (*https://www.epa.gov/title-v-operating-permits/use-title-v-emission-fees-small-business-activities*).
[8] The term "part 70 sources" is defined in 40 CFR §70.2 to mean "any source subject to the permitting requirements of this part, as provided in 40 CFR §§ 70.3(a) and 70.3(b) of this part."
[9] CAA section 502(b)(3)(A); 40 CFR § 70.9(a).
[10] 40 CFR § 70.9(a).

- Part 70 purposes are all activities in a permit program that must be funded by part 70 fees.[11] As EPA has previously explained in EPA's November 1993 memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance* ("Fee Demonstration Guidance"),[12] the types of activities included in a permit program to be funded by permit fees and the costs of those activities will differ depending on many factors associated with the particular permitting authority. These include, but are not limited to:

    - The number and complexity of sources within the area covered by the program;
    - How often the permitting authority reviews or modifies permits;
    - The universe of sources covered (i.e., some permitting authorities may not opt to defer permitting for non-major sources);
    - The experience of the permitting authority with permitting (e.g., agencies with experienced permitting staff may not need as much extensive training programs as those with less staff operating permit experience).

- Each permitting authority will have to determine its own permitting effort and what activities are directly or indirectly concerned with operating permits.

- As part of its ongoing oversight of part 70 programs, EPA may require "periodic updates" of the "initial accounting" portion of the "fee demonstration" to show whether fee revenue required by part 70 is used solely to cover the costs of the permit program.[13]

- EPA may also require a "detailed accounting"[14] to ensure that the fee schedule is adequate to cover costs when a permitting authority changes its fee schedule to collect less than the "presumptive minimum"[15] or if EPA determines, based on comments rebutting a presumption of fee sufficiency or on EPA's own initiative, that there are questions regarding whether the fee schedule is sufficient to cover the permit program costs.[16]

- EPA will presume that a fee schedule meets the requirements of part 70[17] if that schedule would result in fees above the "presumptive minimum." The "presumptive minimum" is generally defined to be "an amount not less than $25 per year [adjusted for increases in

[11] 40 CFR § 70.9(b)(1).
[12] *Title V Fee Demonstration and Additional Fee Demonstration Guidance*, Memorandum from John S. Seitz, Director Office of Air Quality Planning and Standards, to Regional Directors, November 1993. *https://www.epa.gov/sites/default/files/2018-03/documents/fee_eval_2018.pdf*.
[13] 40 CFR § 70.9(c), (d)..
[14] 40 CFR § 70.9(b)(5).
[15] 40 CFR § 70.9(b)(2)(i) through (v).
[16] 40 CFR § 70.9(b)(5); *See* Section 2.0 of the Fee Demonstration Guidance for an example "detailed accounting." The scope and content of a "detailed accounting" may vary but will generally involve information on program fees and costs and accounting procedures and practices that will show how the permitting authority's fee schedule will be sufficient to cover all program costs.
[17] 40 CFR § 70.9(b)(1).

the Consumer Price Index] times the total tons of the actual emissions of each "regulated air pollutant (for presumptive fee calculation)" emitted from part 70 sources." Note that the calculation of the "presumptive minimum" also excludes certain emissions and adds a "GHG cost adjustment."[18]

C. Overview of Part 70 Program and Fee Evaluations

In its oversight capacity, EPA periodically evaluates part 70 programs to ensure that they are being implemented and enforced in accordance with the requirements of title V and part 70. EPA's operating permit program evaluations are intended to help pinpoint areas for improving program implementation, determine if previously suggested areas of improvement have been addressed by the permitting authority, and identify best practices that can be shared with other air agencies and the EPA Regions to enhance the implementation and integrity of all operating permit programs. As noted in EPA's 2018 Part 70 Fee Evaluation Guidance, program evaluations can be conducted on any particular element or elements of the part 70 program, including the complete program, or the air agency's implementation (including fee reviews), enforcement, and legal authority for the program.

II. Criteria for Title V Fee Evaluations

A. Timing of Title V Fee Evaluations

In EPA's 2018 Part 70 Fee Evaluation Guidance, EPA cited to the Office of Air and Radiation's 2017 National Program Manager Guidance ("NPM Guidance") as the mechanism for establishing annual requirements regarding the frequency and timing of EPA Regions' part 70 program evaluations.[19] The NPM Guidance established the expectation that each EPA Region complete at least one title V program evaluation and report each year but did not specify an expectation of whether each instance of a program evaluation was to include a fee evaluation. The 2018 Part 70 Fee Evaluation Guidance noted that a best practice is to conduct a fee evaluation as part of the overall program evaluation.

It is impractical to prescribe a timeframe applicable to all EPA Regions for conducting part 70 fee evaluations, for example, due to the differences across EPA Regions in the number of programs they oversee.[20] Nonetheless, this guidance now establishes a required best practice for each Region to conduct a fee evaluation as a part of their expected yearly title V program evaluation for one permitting authority, as prescribed in the NPM Guidance. The fee evaluation should follow the minimum standard of review outlined in the following section and should generally focus on fee revenue and program costs to determine if deficiencies are present and to

[18] 40 CFR § 70.9(b)(2).
[19] *Final FY 2017 OAR National Program Manager Guidance Addendum*. U.S. EPA, Publication Number 440B16001 (May 6, 2016) located at *https://www.epa.gov/sites/default/files/2016-05/documents/fy17-oar-npm-guidance-addendum.pdf*.
[20] Currently, the number of title V programs in each Region varies significantly (between 4 and 43 individual programs). In addition, the scope of each title V program varies greatly, with some relatively small programs issuing a small number of permits to a small variety of sources each year and other larger programs issuing numerous permits to a wide variety of source types.

identify any concerns such as staff shortages or permitting backlogs. If that evaluation presents concerns about deficiencies or sustainability of fees, the Region should complete a more in-depth evaluation (detailed accounting) within 1 year.

B. Minimum Standard of Review for Title V Fee Evaluations

EPA has developed tools and resources for conducting fee evaluations and a minimum level of review to ensure consistency in information and data collection and evaluation reporting. A title V fee evaluation will be conducted differently for every permitting authority depending on the size and scope of permitting in that jurisdiction; however, EPA has developed an Example Annual Financial Data Form for 40 CFR Part 70 that regions should use as a minimum for fee evaluations conducted as a part of an annual program evaluation. This and additional tools can be found as attachments in EPA's 2018 Part 70 Fee Evaluation Guidance. EPA regions may revise the tools to meet their needs, but, in general, the Example Annual Financial Data Form should result in collection of similar information at a comparable level of detail.

III. Corrective Actions in Program and Fee Evaluation Reports

A. Timeliness of Corrective Actions

EPA Regions should work collaboratively with permitting authorities to determine the most appropriate timeframes for addressing corrective actions identified in EPA program and fee evaluation reports. Permitting authorities should be afforded flexibility in setting timeframes for completing corrective actions, but also be expected to complete the corrective actions as expeditiously as possible. The time afforded may depend on the level of effort and resources necessary to meaningfully address the issues. For example, states may require more than a year to adopt new fee schedules, but they should be expected to respond to requests for additional information in a matter of weeks. EPA regions should document these timeframes as a schedule of corrective actions with clear milestones. These milestones can be revised as necessary, but failure to meet the milestones should result in the consequences outlined in the following section.

B. Consequences of Failure to Complete Corrective Actions

Failure by a permitting authority to complete corrective actions in EPA evaluation reports in a timely manner may result in pervasive and increasing fee deficits, which can lead to negative impacts on permit processing time, implementation and enforcement of title V permit terms, staffing, and ultimately, in unsustainable title V programs. While consistent communication between EPA regions and permitting authorities regarding the completion of corrective actions and potential need for extensions is preferred, in situations where the permitting authority fails to complete corrective actions in a timely manner, EPA regions should pursue specific and escalating consequences.

In general, EPA regions should keep the Office of Air Quality Planning and Standards (OAQPS) apprised of correspondence with permitting authorities and consult with OAQPS as necessary while pursuing the escalating consequences.

EPA regions should take the following steps after determining that a permitting authority failed to meet its corrective action obligations:

1. Initiate communication between the EPA Regional Section Chief or Manager and equivalent manager/director within the permitting authority informing it of its failure to complete corrective actions in a timely manner.
    - Discuss reasoning for the failure to complete the corrective actions
    - Discuss revising or revisiting the corrective actions and propose new timeframe

2. If the revised corrective actions are still not completed within the adjusted timeframe or the permitting authority has indicated it will not complete the corrective actions, initiate communication between the EPA Regional Air Program Branch Manager and equivalent manager/director within the permitting authority to discuss resolution.

3. If needed, continue to escalate conversations to EPA Regional Air Division Director, then subsequently to the Regional Administrator and equivalent managers/directors within the permitting authority to discuss EPA's next course of action.

4. If these steps do not result in any corrective actions being completed, appropriate EPA officials should discuss taking action consistent with CAA section 502(i) and 40 CFR § 70.10(b) and after consultation with the national title V program managers at OAQPS:

    - Whenever the EPA determines that a permitting authority is not adequately administering or enforcing a part 70 program, or any portion thereof, the Administrator will notify the permitting authority of the determination and the reasons and publish the notice in the **Federal Register**.

    - If, 90 days after issuing such a notice, the permitting authority fails to take significant action to assure adequate administration and enforcement of the program, EPA may take one or more of the following actions:

        - Withdraw approval of the program or portion thereof;

        - Apply any of the sanctions specified in section 179(b) of the Act;

        - Promulgate, administer, or enforce a federal program under title V of the Act.

            - In this instance, pursuant to CAA section 502(b)(C)(i), EPA may collect reasonable fees from sources and those fees shall be designed solely to cover EPA's cost of administering the provisions of the permit program promulgated by EPA.

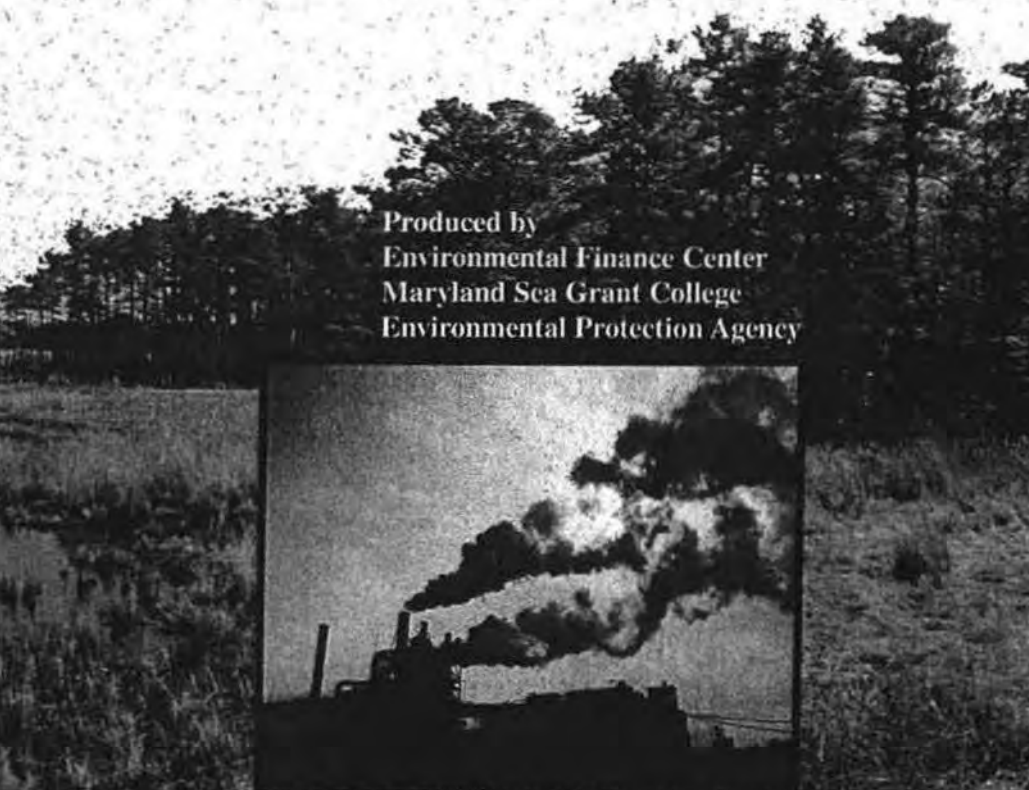
Overview of

CLEAN AIR

Title V Financial Management and Reporting

A Handbook for Financial Officers and Program Managers

Produced by
Environmental Finance Center
Maryland Sea Grant College
Environmental Protection Agency



ACKNOWLEDGMENTS

The production of this booklet is made possible through grant number 993379-01-0 from the Environmental Protection Agency to the Maryland Sea Grant College. We are particularly appreciative of support from the Office of Air Quality Planning and Standards and Region III.

Fund accounts and financial forms in Appendix A are from *Governmental Accounting, Auditing and Financial Reporting*, reprinted with permission of the Government Finance Officers Association, 180 N. Michigan Avenue, Suite 800, Chicago, IL 60601.

Special thanks to Mark Kellett for his help in producing this report.

For additional copies of this handbook, contact:

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Overview of

CLEAN AIR

Title V Financial Management and Reporting

A Handbook for Financial Officers and Program Managers

Produced by
Environmental Finance Center
University of Maryland System

Supported by
U.S. Environmental Protection Agency
Maryland Sea Grant College

January 1997

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Publication Number UM-SG-CEPP-97-02

Produced by the Environmental Finance Center, University of Maryland System in cooperation with the Maryland Sea Grant College, University of Maryland, College Park.

The Environmental Finance Center (EFC) Network is an association of six universities, created under EPA sponsorship, providing finance training and educational services to state and local officials and small businesses. EFC services are designed to demonstrate ways of lowering the costs of, and increasing investments in, environmental facilities and services. Funding for the network came initially through EPA grants then from other sources as well, such as public agencies and private sources and from fees for training courses, materials, and conferences.

The participating institutions are: the University of New Mexico; University of Maryland System; Maxwell School at Syracuse University; California State University at Hayward; Cleveland State University; and Idaho Universities Policy Group at Boise State.

Printed in the United States of America on recycled paper.

CONTENTS

INTRODUCTION

Title V of the Clean Air Act Amendments of 1990 (P.L. 101-549) establishes an operating permit program for stationary sources of air pollution. Title V requires that state agencies and local air programs collect fees from air permit holders to support operation of the permit program. Since the passage of the Clean Air Act, states have been working diligently to address the many challenges associated with the implementation of the Title V program. All states and U. S. territories (6) have submitted operating permit programs to EPA for approval. Most of these programs have been approved.

Among the myriad challenges confronting states in designing and implementing the Title V operating permit program is the need to address associated financial management responsibilities. This document explores the financial challenges air quality agencies face when implementing the Title V program. The goal of the document is to help state, local, and federal air program personnel—especially those with limited financial management experience—to understand the fundamentals of financial management and reporting. It provides an overview of Title V program financial management challenges, discusses generally how states are addressing these challenges, provides state-specific examples of Title V management and reporting practices, and discusses pros and cons of various approaches to financial management.

This overview report was developed to be an introductory guide to key Title V financial management responsibilities — but should not be considered to be formal EPA guidance. The report was developed through a broadly designed interview-survey process that explored the state/local application of general government accounting, budgeting, and financial reporting concepts to the Title V program. The primary target audience for this document includes state and local air quality agencies that are in the process of developing or refining the financial management and reporting aspect of their Title V programs.

The remainder of this report is presented in five sections. The next section provides a brief description of the Title V management challenges as were identified through the research phase of the project. Sections three, four, and five explore the primary financial management challenges. The findings of the study are summarized in the conclusion section of this report.

How Many Air Programs Are There?

There are 56 state (including the District of Columbia and Territories) and 60 local air operating permit programs in the United States. Most states in the U.S. have a single program account for all air program operating procedures, fees, and permits within their state.

In eleven states there are also local air programs. Some states allow these local programs to collect and

distribute their own Title V fees. In other states, however, a state agency collects all Title V fees and distributes them to the local programs. In California, on the other hand, there is no state program at all, and all 34 local permitting authorities submit operating permit programs directly to the EPA.

There are no multi-state Title V permit programs. There are, however, some multi-state boards which discuss certain environmental issues, including air pollution and Title V permits.

CLEAN AIR ACT
OPERATING PERMITS PROGRAMS

Region	Number of States/Territories	Number of State Programs	Number of Local Programs
I	6	6	0
II	4	4	0
III	6	6	0
IV	8	8	10
V	6	6	0
VI	5	5	1
VII	4	4	2
VIII	6	6	0
IX	7	7	39
X	4	4	8
Total	56	56	60

STATES WITH LOCAL PROGRAMS

Region	State	Number of Local Programs
IV	Alabama	2
IV	Kentucky	1
IV	North Carolina	3
IV	Tennessee	4
VI	New Mexico	1
VII	Nebraska	2
IX	Arizona	3
IX	California	34
IX	Nevada	2
X	Oregon	1
X	Washington	8

Overview of Title V Program Management Challenges

The introduction of the Clean Air Act Title V Fee Program presented many challenges to state air quality agency personnel, specifically in the areas of financial management and reporting. Historically, these agencies have been involved with the implementation and management of the Section 105 program, funded by federal grants. Conversely, Title V does not provide federal grants to state air quality agencies for program implementation. Instead, the Title V program is designed to be completely self sufficient, relying on fees received from Title V permittees to offset program expenditures. In many cases, the Title V program is the first major fee-based program implemented by state air quality agencies.

Learning to fiscally account for fee-based program revenues and expenditures is the primary challenge facing air quality agencies that have historically dealt primarily with grant-based programs. Further, these agencies must now learn to manage fee-based and grant-based program resources simultaneously. The Title V program requires state air quality agencies to account for Title V resources in a fashion that segregates them from other air quality programs, requiring state agencies to review the methods used to account for program resources.

Based on interviews conducted with state and local air program personnel, the financial management and reporting challenges facing Title V program agencies can be broken down into three categories:

- ***Time Keeping and Cost Allocation.*** As a result of Title V, air quality agencies modified procedures for tracking and distributing labor and non-labor costs among Title V and non-Title V programs. A key challenge these agencies face is addressing the manner in which indirect costs are allocated to these programs.

- ***Accounting Fund Structures and Controls.*** In establishing the Title V program, air quality agencies had to select an accounting fund structure for the Title V program. Different fund structures are recommended for different types of activity by the governmental accounting industry. Also, the fund structure would need to assure the permit program is managed as a segregated set of accounts to assure compliance with the Clean Air Act.

- ***Internal and External Reporting.*** Finally, those agencies implementing the Title V program are developing internal and external reporting procedures for their stakeholders. Assessing the success of the Title V program will rely heavily on the use of sound reporting practices.

These categories follow the natural sequence of actual financial management activities. First, the flow of financial information begins with the initial input of labor cost information in the time keeping process. Next, financial information is organized in the budget and accounting system. Finally, the information is reported in financial and other reports that are generated for internal and external reporting.

CHAPTER 1: TIME KEEPING AND COST ALLOCATION

Introduction

Time Keeping

The ability to accurately track time spent by employees is just as important in the government sector as it is in the private sector. Private sector businesses need to keep track of what their employees are doing — as well as when they are doing it — in order to minimize costs and maximize efficiency. While these goals are also important for governments, sound time keeping procedures also allow government accounting departments and program staff to monitor the labor charges from program to program. Government budgeting and accounting is characterized by strict segregation of the numerous programs.

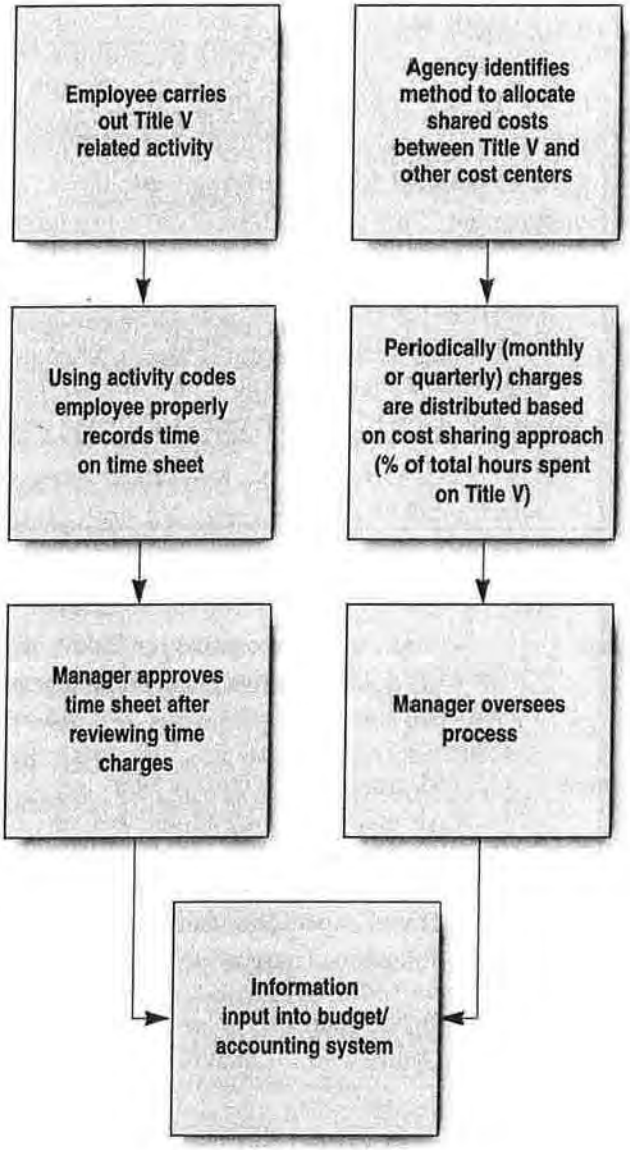
This same argument holds true for the Title V program. Funds to be used to pay the engineers, managers, and administrative staff for working on Title V tasks must come from the Title V program. The only way to ensure the proper segregation of these labor charges is through the use of an appropriately designed time sheet process. Employees record their time on a daily basis by using different time codes, each of which refers to a unique account to which time is charged. After time sheets are submitted, the

total labor hours charged to each project can be calculated, either manually or through a computerized system. Most importantly, this information can then be used by accounting staff and managers alike to monitor the status of Title V, Section 105, or any other specific air quality program.

Cost Allocation

A primary function of any government accounting system is to record accurately revenues and expenditures as they are realized or incurred. Timely recording or posting of account activity is necessary in order to ensure up-to-date accuracy of financial reports that may be scrutinized by a variety of entities. While timeliness is important when measuring the effectiveness of an accounting system, it is also necessary to review the manner in which expenditures are allocated to various revenue sources. The costs of implementing a fee-based program such as Title V should be recovered by the revenues realized through the operation of that same program. In order for this to occur, effective governmental accounting systems need to record all direct and indirect costs associated with program implementation in a manner that allows those costs to be identified or recognized — as a Title V program expense, for example. Once the accounting system has identified the program(s) to which the expense is attributed, the expense can then be allocated, offsetting the corresponding revenue source(s). Figure 1 graphically depicts the flow of information associated with the time keeping and cost allocation process.

FIGURE 1: COST ALLOCATION AND TIME KEEPING ACTIVITY



Allocating Title V Costs

Numerous costs are associated with Title V program implementation, all of which can be allocated in a variety of ways. Direct labor includes those professionals who can attribute all or a portion of their work to the Title V program. Indirect labor includes the administrative and managerial personnel who provide general support for the entire air quality division or department. Direct (non-labor) costs are those costs incurred through the direct implementation of the Title V program. Finally, indirect (non-labor) costs are those costs incurred by the entire air quality division or department that will benefit all air programs. Examples of each of these types of expense are presented below.

Expense Category	Examples
Direct labor	• Employees responsible for Title V permitting • Air quality engineers conducting permittee inspections
Indirect labor	• Managers of air quality agencies • Air quality agency administrative support staff
Direct (non-labor)	• Travel expense to visit Title V permittee • Telephone charges for Title V program tasks
Indirect (non-labor)	• Office supplies for air quality agency • Utilities for air quality agency

Direct Cost Allocation Overview

Allocating the appropriate direct costs to the Title V program is best accomplished by using time sheets, either manual or automated, that can interact with the government accounting system. With such a system in place, assigning direct costs to various air quality programs is a straightforward process. Air quality department employees fill out time sheets weekly or bi-weekly to reflect the number of hours spent on various tasks. By assigning a unique account charge code to each task, accounting staff are able to track, in detail, the amount of direct labor charged to each air quality program. This information allows accounting departments to reconcile direct labor charges with the Title V program budget and also provides Title V program managers with information on how labor is being distributed across various air quality programs such as Title V, Section 105, and others.

Direct, non-labor charges should be allocated using the same approach. Air quality employees that charge direct expenses, such as travel, to air quality programs can use the same accounting charge code procedures as for direct labor.

Indirect Cost Allocation Overview

Charging indirect labor and non-labor costs to various air quality programs is much more challenging than under the direct cost scenario. In order to maintain efficient and accurate accounting practices, air quality program accountants and managers alike need

to ensure that all indirect costs are recovered, and that they are recovered equitably.

The most practical method of allocating indirect labor costs to Title V and non-Title V programs involves using direct labor charges as an index. Under this framework, indirect labor charges are allocated to Title V and non-Title V programs based on the number of direct labor hours charged to the various air programs. For example, if Title V direct labor charges represent sixty percent of the total direct labor charges within the air quality division, assigning sixty percent of the indirect labor costs to the Title V program is justifiable. It can be assumed that sixty percent of the secretarial and managerial support time is being spent on Title V related tasks under this scenario. Percentage allocations for indirect labor costs can be adjusted weekly or monthly, based on the direct labor charges for that period.

Allocating indirect non-labor costs among Title V and non-Title V is more complicated. As indirect costs are to be shared among a variety of programs, they should be allocated in a manner where the program receiving the greatest benefit from the source of the cost is responsible for the majority of the cost recovery. Unfortunately, this presents a tedious and complicated task for accounting staff. Instead, common practice usually involves the same process as described for indirect labor; as the indirect non-labor costs are allocated based on the percentage direct labor charged to each program. However, some state programs use their own discretion for allocating these

costs, often treating indirect non-labor costs as general overhead and charging to each air quality program equally. State-specific approaches to this type of cost allocation are described in the next section.

State Title V Programs

Accounting personnel from state air quality divisions across the country were contacted in order to determine the common practices regarding cost allocation for Title V and non-Title V programs. The majority of the state air quality agencies interviewed rely on the methods described and recommended in the previous section of this document when tracking time, and allocating and recording costs.

The table on page 8 contains a sample of the states contacted and describes their approach to cost allocation.

Time Keeping

Of the state air quality divisions contacted, all but one require the completion of weekly timesheets to provide accounting and program staff with a detailed account of where time is spent during the week. To complete the timesheet, employees must provide the number of (direct labor) hours worked daily on each particular task, each of which identified by its own unique account/charge code. The level of detail in the account/charge code system varies from state to state, but at the very minimum, the Title V program is represented by its own unique identifier. The majority of the time sheet systems in the state air quality agencies

TITLE V COST ALLOCATION AND TIME KEEPING PROCEDURES

State	Cost Allocation	Time Keeping
Maryland	Non-labor costs are allocated to each program (Title V, non-Title V, 105) based on direct labor charges to each program. Maryland's sophisticated MIS (Management Information Systems) allocates these costs based largely on the Program Cost Accounts (PCAs) employees use to charge their time.	Time sheets are used to allocate labor to appropriate accounts. Title V will also use the PCA system,which drives a number of other fiscal reports as well as indirect charges. Time sheet and financial reporting systems are very closely integrated.
Mississippi	Non-labor costs are allocated to each program (Title V, non-Title V, 105) based on direct labor charges to each program.	Pre-printed time sheets are used and interface with MIS by account code. Employees are prevented from charging non-air-related accounts. Title V is only one account code — more detail is desired by department. Summary reports distributed to program managers monthly.
North Carolina	Non-labor costs are allocated to each program (Title V, non-Title V, 105) based on direct labor charges to each program.	Time sheet system will interface with new accounting software. Time tracking began in 1994 and divides staff time into a number of categories, including Title V. Activity codes are used to identify specific tasks charged to under the Title V category.
Oregon	Non-labor costs are allocated to each program (Title V, non-Title V, 105) based on direct labor charges to each program.	The sophisticated on-line accounting system interfaces with the employee time sheet system, using very detailed task codes to reflect employee charges to Title V.
Pennsylvania	Non-labor costs are allocated based on program staffers' recommendations as to the relative percentages that should be charged to Title V & non-Title V. PA is working on a more exact allocation system.	Time sheets are filled in manually, but contain codes correspond ing to low-level tasks for the Title V program. Information is entered into MIS and reports are generated showing expended funds per employee, per task, etc.

are computerized and interface with the other management information system(s) (MIS) in place in the state. This relationship among computer systems allows timesheet information, for example the total number of hours charged to Title V for the week, to be immediately reflected in the Title V budget system.

Figure 2 shows an example of a completed time sheet. In this example, the actual codes and sub-codes used to segregate tasks correctly are shown in the first two columns under the "Project" heading. This particular employee has divided his or her time among six unique tasks, necessitating six unique account codes. The first three activities are "NSR" ("New Source Review") subtasks. The last three project functions listed are OPP (Operating Permit Program) activities. The second column lists the operating permit program activity (section code). Based on this information, accounting and program personnel can review the time sheet and know exactly how much time was spent on each task and to what accounts that time should be charged, all without any guesswork. Figure 2 includes the actual pages from the same air quality agency that list and define the appropriate account sub-codes for the state air activities including the Title V Operating Permit Program.

Labor Costs: Direct

Direct labor, those hours dedicated to a specific task, are accounted for using the time sheet system described above. Employees simply enter the number of hours worked and the account code (or sub-code if

POS # 1008 DEPARTMENT OF ENVIRONMENTAL QUALITY — TIME REPORT — REPORT ENDING 04/15/96

LAST, First NAME (Print)

THE FOLLOWING STATEMENT APPLIES
TO ONLY NON-EXEMPT EMPLOYEES
I certify that this statement represents the hours worked by me each work day and work week of this pay period and the pay to which I am entitled for this pay period

EMPLOYEE SIGNATURE: _____

CERTIFIED BY _____

PROJECT			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		
FUNC.	SECT.	0	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTAL
NSR	014		2.00		4.00					8.00		6.00					1.00		21.00
NSR	024					3.00					1.00		1.00	8.00			3.00		16.00
NSR	034		1.00	5.00							5.00	2.00					4.00		17.00
OPP	INS		5.00			4.00					2.00		7.00						18.00
OPP	PAR			3.00	4.00		1.00												8.00
OPP	EIF					1.00	7.00												8.00
																			0.00
																			0.00
																			0.00
																			0.00
V.T.T.																			0.00
S.L.T.																			0.00
M.I.L.																			0.00
A.C.T																			0.00
TOTAL HOURS			8.00	8.00	8.00	8.00	8.00	0.00	0.00	8.00	8.00	8.00	8.00	8.00	0.00	0.00	8.00	0.00	88.00

COMP. EARNED																	0.00

FIGURE 2

applicable.) After the time sheets are submitted and approved, the actual hours are charged to appropriate Title V or non Title V program.

Figure 2 also shows total direct labor charges for an air quality agency employee. The "Total Hours" line displays the total hours charged for the day and period (two weeks in this case), while the far right column "Total" shows the number of hours spent on each particular task.

AIR QUALITY DIVISION
TIME SHEET BUDGET & ACTIVITY CODES
JUNE 21, 1994

Operating Permit Program
Function Code OPP

Section Code (Activity)	Explanation
INS	Facility Inspections and Report Writing/Staff Review
PAR	Operating Permit Application Review
EIF	Emissions Inventory/fee Assessment
REG	Regulation and SIP Development for Stationary Sources
AMM	Ambient Monitoring — See March 24, 1994 budget Chargeable Work Activities for list of activities.
VIS	Visibility Monitoring
CEM	CEMs Certification and Audits
SKT	Stack Tests Witness and Review

CPL	Review of Facility Compliance Reports
SBA	Small Business Technical Assistance Program
EPA	EPA Reporting
FIL	Filing
AQB	Air Quality Advisory Board
BPT	Budget Preparation and Tracking
CMI	Complaint Investigation (Stationary Source)
ENF	Enforcement prior to Filing in Court
ADM	General Administrative Duties. (Reserved for Administrator Secretaries, Program Manager)

New Source Review (NSR) Function Code NSR

Section Code (Project/Activity)

Assigned Application #	A Unique Application number is assigned for each application corresponding to company name and date of application
ADM	General Administrative Duties (Reserved for Program Mgr. and Administrator)

Non Fee Program (EPA 105 Grant and State General Fund)

Function Code
(Budget) 105

Section Code (Activity) and Explanation

AMM	Ambient Monitoring (See March 24, 1994 Budget Chargeable Work Activities for full list of activities)
ASB	Asbestos and Indoor Air
CMI	Complaint Investigation (Not related to stationary sources.)
REG	Regulation and SIP Development (Not related to stationary sources).
BPT	Budget Preparation and Tracking
ENF	Enforcement Activities-including all enforcement actions for asbestos and work after filing in court for stationary sources.
ADM	General Administrative Duties (Reserved for Administrator, Secretaries, and Program Manager)
RAD	Radiological Activities
RSI	Railroad Safety Initiative

Labor Costs: Indirect

For most of the air quality agencies interviewed, the process of allocating indirect labor cost is based on the direct labor tracking system described above. Labor costs for air quality division managers and

administrative support staff that are not directly attributable to a program activity code are allocated based on the percentage of total labor charged to each of the air programs, e.g., Title V, Section 105, etc. Using the employee time sheet system, the total number of direct labor hours charged to each air quality program is calculated along with the percentage that program represents of total direct labor charges. These percentages are then multiplied by the total number of indirect labor hours charged for the same period, resulting in the proper allocation to be charged to each air quality program. Most air quality agencies interviewed rely on their MIS to perform these calculations, while others make the calculations manually.

Non-labor Costs

Direct non-labor costs are allocated and recorded differently from state to state. Some agency staff that were interviewed rely on the time sheet system to track these costs, usually for travel expenditures that are to be charged to a particular program, e.g., a Title V permittee inspection. Other agencies use an independent expense authorization system to approve, pay, allocate, and record direct costs. Regardless of the subtle procedural differences, all agency staff interviewed use an account/charge code to ensure that the direct (non-labor) costs are charged to the appropriate air quality program, a code that usually differs from that used to allocate and record labor charges within the time sheet system. Additionally, all those interviewed relied on their agency's MIS at some level to charge direct costs to the various air program budgets.

As expected, allocating and recording indirect non-labor costs to the various air quality programs presents a greater challenge to the state agencies contacted. As described previously, indirect non-labor costs would best be allocated among various air programs by assessing the amount of benefit or usage each program realizes as a result of incurring the indirect cost. Again, measuring the relative contribution of each indirect expenditure to each air program could present a unacceptable administrative burden as attempts are made to calculate, for example, the amount of air conditioning costs to be charged to the Title V program. Instead, the majority of the state air quality agencies interviewed relied on the direct labor percentage calculation described above in order to allocate their indirect non-labor costs. The remaining states grouped these indirect non-labor costs into an overhead-like category, distributing the costs equally among all of the air quality programs. Again, all state agencies contacted rely on their MIS at some level to allocate, record, and post these costs to the proper air program budgets.

Lessons Learned by Air Quality Agencies

Although the Title V program is relatively new and state and local agencies are just now beginning to implement the accounting procedures necessary to manage the program, a few lessons have been learned that can provide insight for local air quality agencies as they develop their own programs.

Allocation Methods

Generally speaking, the methods used by various air quality agencies to allocate costs among Title V and non-Title V programs have been in use for many years. The use of time sheets and the practice of indexing indirect labor and indirect non-labor costs to direct labor hours has a long history in both public and private sectors. However, most of the agencies contacted expressed the desire for a more exact or detailed approach to indirect cost allocation. While these agencies, for the most part, were unable to offer any suggestions toward efficient improvements, a few of the agencies were in the process of refining their MIS to allow for greater control over indirect cost allocation, using indices in place of or in addition to direct labor hours.

Some air quality agencies also raised concerns over direct non-labor cost allocation practices. While most charges are easily categorized and recorded as Title V, Section 105, etc., some direct charges, especially those shared among programs, are more difficult to allocate. For example, an air quality engineer incurs travel expenses for a trip to visit a Title V permittee. However, on the same trip, that engineer also performs a site visit under the Section 105 program. To which program should the engineer charge the (direct) travel costs? Indirect costs would be allocated based on direct labor hours, but travel expenses are direct costs and must be charged directly to a specific program. In some states, the answer lies in the engineer's own judgement regarding the extent to which

the trip was primarily to conduct one activity or another. Most states have informal policies or practices in place that result in equal sharing of costs between air program budget centers such as the Title V program and the Section 105 grant program. Regardless of the process that states have devised, it is important to point out that these procedures should be formally documented and communicated to EPA Regional Air contacts. Documentation of the practices will help to minimize any misunderstandings regarding cost sharing approaches.

Account/Charge Codes

Many air quality agencies expressed difficulty in implementing the time sheet system with respect to account/charge codes. Interviews with agency accounting personnel indicated that some time sheet systems contain too many codes, sub-codes, sub-sub-codes, etc. for charging tasks under Title V, or non-Title V programs. In these cases, air quality program personnel are sometimes inconsistent with respect to charging time to identical tasks. This problem is aggravated by the fact that few accounting staff persons are required to understand the subtle differences between these often technical tasks and are unable to correct the MIS-coding singlehandedly.

Conversely, about the same number of agencies claim the account/charge codes are not detailed enough, with a few air quality agencies using only one account/charge code for all Title-V-related tasks. This weakness leaves air program managers without

adequate information concerning the specific tasks with which their employees are involved.

Several agencies indicated that they have already modified their activity code lists to facilitate use and achieve more accurate recording of time and expense charges. It should be expected that agencies will continue to modify their activity codes as they gain more experience with the Title V program and identify ways of improving the process.

MIS/Time Sheet System

Many of the individuals interviewed in air quality agencies are currently working to enhance their management information systems (MIS) and to expand the role of MIS in air quality program management. While all of those interviewed employ MIS to some degree, most are moving towards significant system enhancements that will present budget comparison reports, labor distribution reports, and other financial comparisons in real time, taking into account the most up-to-date data in the system. For all of the state air quality agencies, these enhancements include sophisticated interfaces between the MIS accounting/finance modules and the agency's time sheet system, allowing up-to-date information on labor cost allocation among Title V and other air quality programs.

Report Reconciliation/Review

Finally, most of the air quality agencies expressed the need for a more thorough review process with

respect to the time sheet system and cost allocation procedures. Specifically, air quality agency accounting personnel believe periodic interaction is required between accounting staff and air program staff to ensure that direct and indirect labor and non-labor charges are being allocated and recorded correctly. Because most accounting personnel are not familiar with the technical nuances among programs and tasks, the review of time and cost allocation procedures should include air program managers to ensure that those allocations closely mirror actual program activities.

Conclusion

All of the state air quality agencies referenced in this section have been quite successful in implementing procedures to monitor time and track indirect and direct costs associated with administering the Title V program in concert with other non-Title V programs. Most agencies are relying on methods of cost allocation that have been in use for many years and yield acceptable results, while other states are working to improve the procedures further. The fiscal management of the Title V program will continue to be refined by state air quality agencies as program and accounting staff continue to share knowledge and expanding management information systems take on greater roles.

Chapter 2: Accounting Frameworks for Title V Programs

Government accounting and financial reporting practices differ considerably from those found in the private, commercial sector. Generally accepted accounting principles (GAAP) for government provide strict guidelines concerning the methods used to manage the resources provided by taxpayers. While GAAP standards for business enterprises are designed to provide information needed by investors and creditors, GAAP standards for government are intended to ensure legal compliance as well as security for public resources. In most cases, GAAP standards are accompanied by state accounting rules that must also be followed, resulting in a multi-layered oversight of the government accounting process.

One of the primary differences between government accounting and the private sector is the GAAP-recommended use of fund accounting. According to the Governmental Accounting Standards Board (GASB), a fund is defined as:

> *A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together will all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special*

regulations, restrictions, or limitations. (Source: GASB Codification of Governmental Accounting and Financial Reporting Standards, Section 1300)

Simply stated, fund accounting is the practice of separating the record keeping activity of any number of individual funds. A fund can be viewed as a fiscal entity with segregated accounting records used to implement a specific program or activity. A federal grant, for example, might be accounted for in a separate fund. Most state and local governments have relied on fund-based accounting systems for many years in order to administer and manage a variety of different programs.

Understanding fund accounting is very important to the management of Title V permit programs at the state and local program level. The assignment of a specific fund type to the Title V program by a state/local program establishes the expected level of segregation from other state funds; the degree to which the fund is meant to be a self-supporting, business-type enterprise; and the types of reports that will be available for internal and external reporting.

This section is designed to familiarize state and local program managers with fund accounting as it relates to the operation of Title V programs. It provides an explanation of fund types that are available for use by states, describes the accounting approach that states and local programs are now using, and presents criteria for evaluating the need to modify a state's accounting structure.

Types of Funds

In general, governments can choose from generic types of funds to manage programs. These fund types are generally divided into four categories: Government Funds, Proprietary Funds, Fiduciary Funds and Account Groups. Each type of fund has its own characteristics and is used for different government activities and programs.

Figure 3 provides a graphical summary of the organization of government funds.

Government Funds

The largest fund category, government funds are used to account for all general government operations, such as fire and police protection, public works, parks, and recreation. There are five fund types within this category:

1. The *General Fund* is the chief operating fund of a state or local government and is used to account for all program resources that are not accounted for in other funds. The government uses only one general fund, containing the majority of its financial transactions.

2. *Special Revenue Funds* are used to account for finances that are legally restricted or earmarked for specific purposes, such as the state implementation of an

environmental mandate. For example, a federal grant most likely would reside in a fund of this type.

GASB states that special revenue fund types may be used:

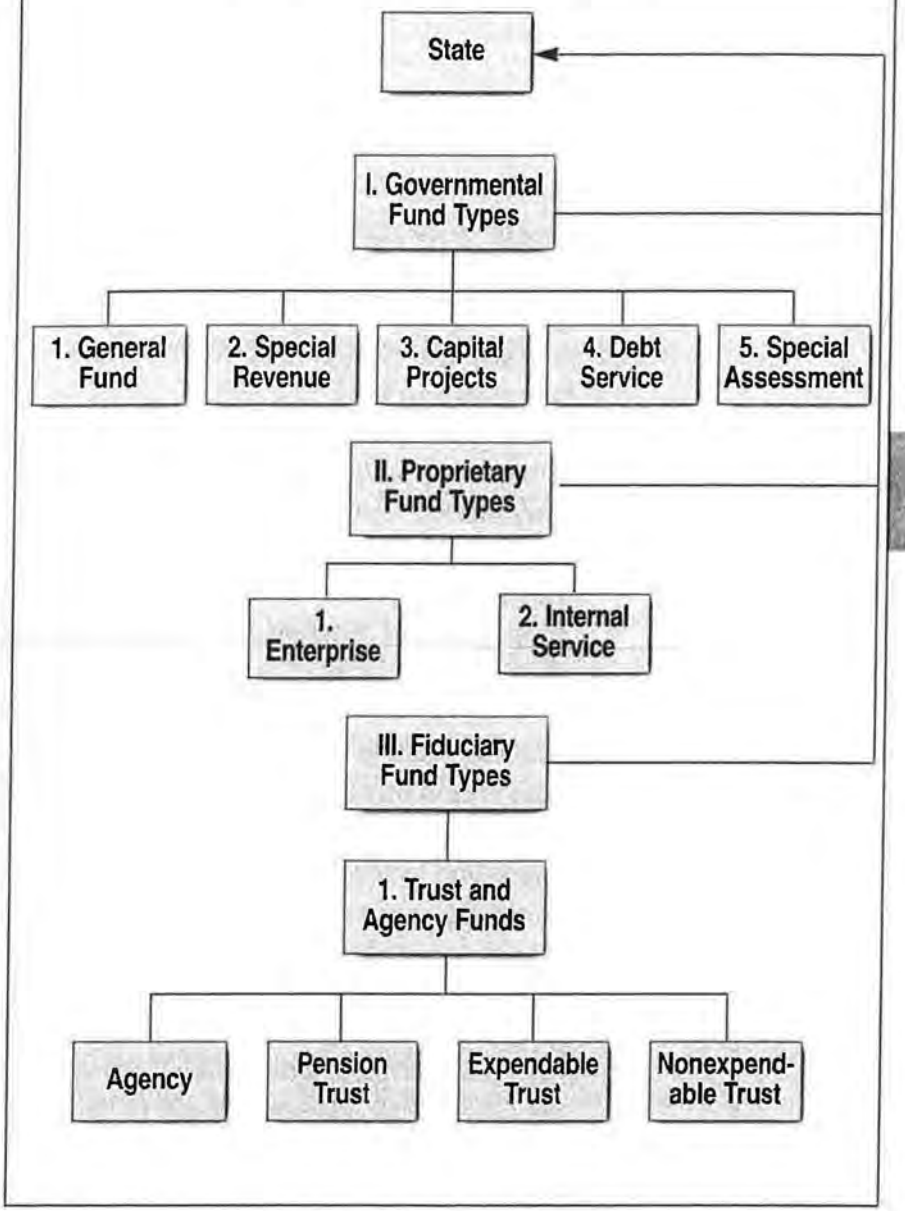
to account for the proceeds of specific revenue sources that are legally restricted to expenditure for specific purposes. (Source: GASB Codification of Governmental Accounting and Financial Reporting Standards, Section 1300.104)

It should be noted that the definition of a special revenue fund is permissive, not prescriptive. A special revenue fund *may* be used under government program circumstances described above, but it is not a requirement. Many governments do not use special revenue funds, choosing instead to report (restricted) activities in their general fund. However, the benefits of special revenue fund accounting over that of the general fund will be examined later in this document.

3. *Capital Projects Funds* account for finances used for major capital development. Governments usually prefer to account for these resources in funds separate from other operations.

4. *Debt Service Funds* are used to account for the repayment of government long-term debt, such as major bond issuances.

FIGURE 3:
FUND ORGANIZATION CHART



5. *Special Assessments Funds* account for the funding obtained through special assessments for public improvements. For example, after levying a special assessment tax for a new sidewalk, the funds are accounted for here.

Proprietary Funds

In general, proprietary funds are used to account for those government activities and programs that are similar to the private commercial sector, such as a transportation system or water system that receives direct payment for services.

1. *Enterprise Funds* are used to account for activities that are operated much like private sector business enterprises. Governments need to charge users for a variety of public services to recover all or a portion of the costs associated with a particular program or activity. Public utilities are a popular example of an entity fiscally managed within this type of fund.

   According to GASB, this type of fund may be used:

   to account for operations (a) that are financed and operated in a manner similar to private business enterprises — where the intent of the governing body is that the costs (expenses, including depreciation) of

providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or (b) where the governing body has decided that periodic determination or revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes. (Source: GASB Codification of Governmental Accounting and Financial Reporting Standards, Section 1300.104)

The benefits of using enterprise funds to account for the Title V program will be presented in the next section.

2. *Internal Service Funds* account for operations similar to those found in an enterprise fund, but for entities that provide goods and services to other government departments. Government printing and data processing are examples of activities accounted for in these funds.

Fiduciary Funds

Fiduciary funds are used to account for assets held by the government as a third-party trustee or agent. Examples of the funds accounted for include government pension plans and willed assets.

1. *Trust and Agency Funds*

   - *Agency Funds* are used to account for non-government assets or assets belonging to another government, such as a county that collects taxes on a county-wide basis.

   - *Pension Trust Funds* account for government pension plans

   - *Expendable Trust Funds* account for government assets that have been provided to that government via a trust or other agreement. Under expendable trusts, interest and principal may be expended based on the provisions of the agreement. Assets left to the government are often placed in this type of fund.

The use of expendable trust funds to account for Title V program resources will be presented in the next section.

   - *Nonexpendable Trust Funds* are similar to expendable trusts, except that only interest earnings may be expended, leaving the original principal intact.

Government Fund Accounting Reports

All of the government funds described above are designed to ensure effective accounting for public monies. In order to test this objective, governments rely on financial reports. Stakeholders, which include tax payers, government accounting departments and program personnel to name a few, have a vested interest in the status of fund resources. The creation of periodic financial reports such as balance sheets, revenue/expenditure statements, budget vs. actual comparisons, etc. provide important information. More specifically, these reports can be used to verify that specific programs, such as Title V, are being implemented efficiently and in accordance with government accounting standards.

As described in the following section, the reports that can be generated and subsequently used to account for the resources of a government program vary slightly based on the specific government fund type used.

Accounting for the Title V Program

State and local air quality agencies are concerned with how Title V resources are managed. First of all, agency managers need to know that the program is being managed in such a way that user fees are covering program costs. They also need to know that Title V staff time and expenses are being covered using Title V resources and, conversely, that non-Title V program expenses are not being recovered through the Title V program. Not only is this information valuable

to the air quality agencies administering the Title V program, but also to a number of other stakeholders, including the Title V permittees, state and local government officials, USEPA, and the general public, each of which has an interest in the efficient and effective operation of the Title V program.

As long as the particular government fund complies with GAAP and state or local requirements, there are no restrictions as to which accounting fund encompasses the Title V program. However, while there are numerous fund types in governmental accounting, only a few can be considered viable for Title V accounting based on the GASB definition of the fund types. In the governmental fund type category, possible candidates include the general fund and a special revenue fund, though it is likely that general fund accounting for a Title V permit program would be considered inappropriate because of the lack of earmarked fund segregation (see below). Capital

TITLE V PROGRAM ACCOUNTING: APPROPRIATE GOVERNMENT FUND TYPES

Fund Category	Fund Type
Governmental Funds	• General Fund
	• Special Revenue Fund
Proprietary Funds	• Enterprise Fund
Fiduciary Funds	• Expendable Trust

projects; debt service and special assessment funds serve purposes dissimilar to those of the Title V program. In the proprietary fund category, Title V could be accounted for using an enterprise fund, but not an internal service fund. In the fiduciary fund category, a state might adopt an expendable trust fund that could account for the Title V program, but agency funds, pension trust funds and nonexpendable trust funds would not be used. A summary of the fund types eligible to account for the Title V program is shown below.

General Fund

The general fund is comprised of a large number of accounts associated with the general services required by any state or municipality. This fund includes accounts for police and fire protection, parks, public areas, and any other government program or activity that is not accounted for elsewhere in the accounting system. If the Title V program were to be fiscally managed from the general fund, it would be identified as an independent account, separate from other general fund accounts. All revenue and expenditure activity such as permit fees (receipts) and the costs of operating the program (staff salaries, for example) would flow in and out of the Title V account within the general fund. Funds would not flow to or from the Title V account to or from any other general fund account without some sort of legislative approval.

While it would be considered acceptable under GASB to use the general fund to account for the Title V program, it is clearly not the best choice. First of all, Title V program reporting is not as detailed when

using the general fund. Under this scenario, Title V is merely one of a large number of accounts, and while general information on the program's fiscal activity is available through the general fund financial reports, the information is not as robust as it would be under another government accounting fund type.

More importantly, most government general funds do not restrict the movement of resources among the many general fund account groups and accounts. Further, it is a common government accounting practice to reallocate program resources among general fund accounts. Title V resources must be accounted for separately, without interaction between any other accounts. This requirement makes the general fund an unattractive option for Title V accounting.

Of the state air quality agencies interviewed, none uses the government's general fund to account for the Title V program, based on the limitations described above. Appendix A contains illustrative general fund statements that show the types of reports included as part of the general fund process.

The types of general fund reports provided as part of a comprehensive annual financial report include the following:

The statement of revenues, expenditures, and changes in fund balance. This statement reports the financial performance of the entity over the annual reporting period. It is meant to communicate the sources, uses, and balances of current

financial resources used to run general government operations.

The balance sheet. This report is best viewed as a snapshot in time of the entity's financial position. It presents the balance between governmental assets and liabilities and fund equity.

Standard accounting formats include presentation of combining statements that group all sub-funds into a summary report as well as separate statements on component units.

Because Title V is a new program specific illustrations of financial statements are not yet available. In order to illustrate the way the statements will be presented, illustrative general fund financial statements have been included as an appendix to this report.

Special Revenue Fund

The decision to select one particular fund type over the others has been primarily credited to historic precedent. Grant-funded programs and activities, such as the Section 105 program, have been accounted for by state and local governments through special revenue funds as common practice for many years. While the Title V program does not involve the management of federal grants, many air quality agencies have viewed Title V as a "sister program" of sorts to the Section 105 program. Subsequently, Title V resources have been managed through the same government accounting fund type — the special revenue fund — as

the Section 105 program. In nearly all state and local air programs contacted, the Title V program is managed within a special revenue fund.

Special revenue funds are the backbone of government accounting structures, as most governments operate numerous special revenue funds to implement a variety of programs and activities. As stated previously, special revenue funds account for financial resources, often in the form of federal grants, that are in some way restricted or ear-marked for a specific government purpose. The permit fees that flow into the state Title V programs are restricted just as a federal grant would be, even though these funds originate from private sector permittees and not the federal government. Because Title V revenues may not be used for any purpose other than the implementation and management of the Title V program, a special revenue fund is an appropriate accounting entity. All revenues and expenditures flowing in and out of the Title V special revenue account are used solely for that program and may not be co-mingled with any other special revenue fund without state legislative approval.

Governments may also account for Title V resources using a Title V account *within* an existing special revenue fund. Under the scenario described above, the Title V program is accounted for through the management of its *own* special revenue fund. Conversely, governments may account for Title V simply as an account within a special revenue fund possessing similar restrictions, such as a Clean Air special revenue fund that accounts for resources for

Title V and non-Title V programs. In this situation, Title V (account) resources are restricted for use only within Title V programs and may not be transferred outside of the fund without state legislative approval. This structure is often used for agencies in which the Title V program is not large enough to justify segregation into a separate fund.

With only one exception, all state air quality agencies interviewed use the special revenue fund to account for the Title V program. Most of the agencies account for Title V by utilizing a separate special revenue fund (Title V only), while the remaining use a separate Title V account within an existing (multi-program) special revenue fund. Appendix A presents illustrations of special revenue fund reports. Because they are part of the general fund, they are presented both as a component of the combining statements for the general fund and as individual special revenue funds.

Enterprise Fund

Enterprise funds are used to account for governmental programs and activities that are similar in nature to private sector commercial transactions. Services that require a cash outlay from the purchaser, as opposed to those services provided via tax revenues, are generally accounted for within enterprise funds. Good examples of these business-like services are public transportation systems and public utilities. Although Title V programs could fall into this category, no states are currently using an enterprise fund structure for Title V programs. Pending changes by

the accounting regulators may, however, change this in the near future.

The Government Accounting Standards Board (GASB) is in the process of modifying the requirements for the use of enterprise funds. Due out in mid-1997, the new requirements will encourage a broader use of enterprise funds for self-supporting activities. If the new requirements are passed by GASB, it is possible that Title V programs would need to be classified as enterprise funds by states to be in full compliance with GAAP. GASB language as now drafted is as follows:

> *Business-type activities should be reported as proprietary (enterprise) funds. To provide more consistency among governments, the circumstances under which enterprise accounting may or should be used are revised as follows:*
>
> *Any activity that charges a fee to users for its services may be reported using enterprise fund accounting and financial reporting. An activity is required to be reported using enterprise fund accounting and reporting if any one of these criteria is met:*
>
> *a. The activity issues debt that is secured solely by a pledge of the net revenue from fees and charges of the activity.*
>
> *b.* ***State or local laws or regulations require that the activity recover the costs of providing services,*** *including capital use charges or debt service, with fees and charges.*

c. ***The pricing policies of the activity establish fees and charges designed to recover the costs of providing services,*** *including capital use charges or debt service. (Source: Preliminary Views of the Governmental Accounting Standards Board on Major Issues Related to Governmental Financial Reporting Model: Core Financial Statements, June, 1995)*

Because Title V permittees pay fees directly to the Title V program's administering air quality agency, as opposed to paying for the government program via income taxes or other sources, the program acts much like a commercial enterprise. Thus, an enterprise fund may ultimately be the structure used for Title V fee programs.

Enterprise fund accounting includes the use of financial reports that are not found under other government fund accounting scenarios, providing information to stakeholders from a more business-like perspective. Specifically, enterprise fund accounting features "Statement of Cash Flows" reports that would be useful in showing the movement of resources in and out of the Title V program. Accounting statements provided as part of an enterprise fund are included as part of Appendix A.

Expendable Trust

Expendable trusts are employed by governments to account for resources provided to the government under a trust agreement for implementation of a specific objective. These resources are often in the form of gifts or donations to the government, but have also historically taken the form of federal grants. As opposed to a non-expendable trust, both principal and interest of expendable trust resources can be expended in accordance with the trust agreement.

Title V resources can be accounted for under an expendable trust structure. While the Title V program does not provide any gifts or direct grants to be entrusted to the state governments, the program does result in revenue generation through permittee fees. These fees become the resources of the trust and can be expended only to implement the Title V program.

One of the state air quality agencies interviewed uses an expendable trust to account for the Title V program.

Summary: Pros and Cons of Title V Accounting Structure Alternatives

While the four government fund options discussed may be used for the Title V program, some are clearly better than others. The table below summarizes the strengths and weaknesses of each option for use in the Title V program.

Fund Type	Strengths	Weaknesses	Reports	Usage by Agencies Interviewed
General Fund	Easily implemented; all states have general funds in place.	Funds can be moved from one account to another with ease — a violation of Title V guidelines.	Statement of revenues, expenditures, and changes in fund balance; balance sheets; budget vs. actual.	None
Special Revenue Fund	Funds are segregated. Generally requires legislative or gubernatorial approval to move to between funds.	Creates another reporting entity; many states have numerous special revenue funds. Does not report on cash flows.	Statement of revenues, expenditures, and changes in fund balance; balance sheets; budget vs. actual.	All states but one (16 of 17)
Enterprise Fund	Behaves much like a commercial business enterprise. Emphasis is balancing resources with expenses. Higher implied level of segregation. Allows cash flow reporting.	Generally not used for small programs such as Title V.	Statement of revenues, expenditures, and changes in fund balance; balance sheets; budget vs. actual; statement of cash flows.	None
Expendable Trust Fund	Funds are segregated for specific purpose. Provides same reports as enterprise fund accounting.	Not originally intended for fee-based programs, historically used for federal grants.	Statement of revenues, expenditures, and changes in fund balance; balance sheets; budget vs. actual; statement of cash flows.	One agency (1 of 17)

Criteria for Evaluating the Need to Modify an Agency's Title V Accounting Structure

As most state and local air programs are just beginning to work with accounting procedures for the Title V program, few have had the opportunity to assess whether or not the selected accounting structure (fund type) is acceptable in terms of meeting the requirements of the program itself and providing accounting staff and Title V program managers with information needed to accurately monitor costs.

In order to assess the adequacy of the Title V accounting program, air programs should ask the following questions:

- Does the current accounting structure ensure that Title V resources are being managed and reported on independently of all other non-Title V programs?

- Do accounting managers within the state or local agency foresee any possibility that Title V funds could be transferred to another account for unauthorized use? If so, which fund structure within the agency provides the highest level of protection from transfers?

- Does the current accounting structure allow for the creation of reports that are meaningful to air quality agency managers and other stakeholders such as permittees and USEPA?

- Is the current accounting structure flexible enough to allow changes in reporting procedures — for example, to correct any inadequacies?

The answers to these questions may indicate that a change in accounting structures is necessary in order to manage the Title V program more effectively.

CHAPTER 3: MANAGEMENT REPORTING AND TRACKING

Introduction

Managerial reporting is one of the most important activities in both the private and public sectors. The presentation of current, accurate information to the stakeholders of a private business or government program can literally make the difference between bankruptcy for the private business or program ineffectiveness for a government agency.

Many academics and business leaders alike agree that information is the most important resource in any entity, private or public. For example, a manufacturing business needs information on how costs are allocated among different products, just as Title V program managers are interested in identifying how program personnel spend their time among Title V and non-Title V programs. These examples reflect the need for "internal" reporting — providing information to those within the organization.

Similarly, information is required by those outside the organization that have an interest in the success of the program. A bank is not going to loan a business millions of dollars without first taking a look at the financial position of the operation. Similarly, stakeholders in the Title V program including permittees, the state legislature, and the federal government need

to know that financial resources are being used as intended by the U.S. Congress in the Clean Air Act. These two examples show the necessity of "external" reporting — providing information to stakeholders outside of the organization.

This section represents the third of the three steps in the natural sequence of financial management and reporting activities. Internal and external reporting logically follows the activities that occur in the first two steps. To recap, the first step involves gathering the accounting information via tools such as time sheets and recording the direct and indirect labor and non-labor costs as they are incurred. The second step entails introducing the cost information to the particular government fund put in place to manage the Title V program. Once the information has been gathered and posted to the fund, it is time to put that information to work in the form of financial reports for internal and external usage.

Step 1: Gather time keeping/cost allocation information

Step 2: Post information to Title V accounting fund

Step 3: Develop internal and external financial reports

Internal Reporting

Internal reporting procedures allow important program and accounting information concerning the Title

V program to be disseminated throughout the air program. This sharing of information accomplishes several important objectives, including: (1) it allows program and accounting personnel to understand the status of the Title V program in a timely manner, and (2) it helps identify those areas of the Title V program in need of modification or improvement. This second point is significant as the Title V program is quite new and its constant improvement will require the sharing of information throughout the administering agency.

The Financial Reporting System

As described above, financial reporting represents the third of three main steps to the financial management and reporting process. Subsequently, the activity that occurs in this final step is a function of what happens in the first two. Most financial reporting systems are set up to provide a standard set of budget and financial statement reports for internal users, based on the type of governmental accounting fund in use. For example, if the Title V program is accounted for as a special revenue fund, the standard reports accessible via the accounting system include balance sheets, statements of revenues, expenditures and changes in fund balance, and budget versus actual reports. The reports, usually generated monthly, are based on (1) the information provided through recordation of permit fee receipts, time sheet and cost allocation practices and (2) the type of government fund in use for Title V accounting. Because of governmental accounting standards, all air programs have the ability to create these reports through their accounting systems, showing Title V-specific information. Some have the

ability to access the information on line. Appendix A shows examples of the types of standard reports that can are generated through the government financial reporting system.

Specialized Financial Reporting

The reports described in the previous section are very important to the air program staff, providing information concerning Title V fund account balances and actual expenditures and revenues to date. Interviews conducted with air program staff revealed, however, that reports customized to fit various individual needs of the users beyond those offered by a traditional reporting system can also be extremely useful. For some agencies, these specialized reports include:

- Summaries of Title V obligations and encumbrances
- List of permittees and fee revenues generated
- Account balances by object code

Specialized reports such as these are extremely useful to air program managers as they implement a new program such as Title V for two main reasons. First, the nature of a fee-based program involves constant monitoring of the balance of revenues and expenditures, necessitating up-to-date information on permit fee revenues and labor cost allocation, for example. In order to recognize whether or not the permit fees are adequately offsetting program expenditures, a specialized level of reporting is needed. Second, specialized reports

can be used to monitor internal performance characteristics of the Title V program itself. The amount of direct labor spent per Title V permittee, for example, may be useful information to Title V managers as would a summary of Title V indirect cost allocation.

While most of the agencies interviewed desire the ability to generate custom reports, few are able to accomplish this objective with their current management information systems (MIS). For many states, generating customized reports entails submitting a formal request to the accounting or MIS department that describes the financial information requested. Delivery of the report can take up to two weeks in some cases, often resulting in information that is too dated to be of much use. A few states, however, have sophisticated MIS in place that allow a large variety of specialized financial reports to be generated on-line, in real time. In these cases, the financial reports reflect the most up-to-date information possible.

The state of Wyoming provides a good example of the usefulness of customized financial reports. Three different financial reports are generated by Wyoming's MIS. Each of the reports displays accounting information not contained in the standard special revenue fund reports described in the previous section. Wyoming's system provides another filter to the data, subsequently giving Title V program managers detailed information on the status of their fee-based program. The first page of the system includes a Summary of Obligations representing the costs with the amount expended or encumbered, and the remain-

ing balance. The last line of the first page shows the Title V fees that are available to cover these costs. This information is crucial to managers of a fee-based program, as it provides cash flow information. The last two financial reports present detailed information on Title V permit program expenditures, again, information that is more detailed and more useful than the standard special revenue fund reports.

Summary: Internal Reporting

In order to effectively manage resources, Title V agencies need access to different types of internal reports: those general purpose statements that are available through the government fund accounting system, and specialized financial reports that can be created by Title V managers to provide detailed information lacking in the general purpose reports. Generating customized financial reports is best accomplished through the use of a sophisticated MIS that can provide the detailed information on-line.

Interviews of air program personnel yielded the following general information regarding internal reporting:

- Most Title V programs are incorporated into state environmental department-wide general purpose financial statements (balance sheets, statements of revenues and expenditures, etc.) on a regular basis, via their government fund accounting systems. Financial reports specific to the Title V fund can be requested by state or local permit program managers.

- Most Title V agencies expressed the need for more specialized internal financial reports.

- A few agencies have the ability to generate detailed, specialized financial reports by using sophisticated MIS; the remaining must submit formal requests for such customized reports and sometimes must wait weeks to receive them.

As air programs begin to identify areas for improving their implementation of the Title V program, the variety and detail of internal reports will most likely increase.

External Reporting

External reporting is the practice of providing information to entities outside of a business or agency. For various reasons, stakeholders like to be kept informed as to the financial status of a public or private entity. For the Title V program, stakeholders that may wish to review the administering agency's financial reports include Title V permittees, state legislatures, or USEPA.

Title V External Reporting Status

In general, external reporting procedures for the Title V program have yet to be developed for a couple of reasons. First, as the Title V program is relatively new, states have been concentrating on designing and implementing the program itself. In order for external reporting to be meaningful, Title V program administrators first need to get the program established and

develop measurement criteria that stakeholders will find useful. Secondly, Title V stakeholders have yet to place external reporting demands on the air programs. Stakeholders, Title V permittees in particular, appreciate the fact that the program is still under development and agency personnel are concentrating on implementation for the time being.

Governmental Reporting Procedures

Any description of external reporting responsibilities for government agencies would be incomplete without mentioning the CAFR. The Comprehensive Annual Financial Report (CAFR) is a detailed report that encompasses the fiscal activity of every fund and account group used by the government. The National Council on Governmental Accounting (NCGA) requires completion of a CAFR each year to provide very detailed accounting information to a wide audience. In addition to the information concerning government accounting activity for the year, the CAFR also presents other general and statistical information. A key characteristic of the CAFR is that it presents audited financial statements for the state or local government.

Through the structure of government fund accounting and management information systems, accounting information on the Title V program is provided to upper levels of the governmental entity. This information is then summarized and becomes part of the CAFR. In most cases, the Title V-specific information is not readily identifiable in this report, even though many Title V programs are accounted for

in their own special revenue funds. While the CAFR presents information on all special revenue funds, most Title V programs are far too small in comparison to other funds to be listed separately. Subsequently, the Title V accounting information is buried within another special revenue fund summary.

External Oversight Committees

As mentioned above, typical external reporting techniques have yet to materialize for the Title V program. However, many agencies have formed external (third-party) oversight committees to help monitor the fee-based Title V program from a multiple-stakeholder perspective. These committees will most likely be the impetus to the development of external reporting procedures. A number of the agency personnel interviewed have set up these committees, which are composed of Title V permittees, state legislators, and other regulatory representatives. The mission of the oversight committees is to help the Title V administering agency develop a program that addresses the needs of all stakeholders, one of those needs being the access to information.

To restate, stakeholders have yet to put pressure on Title V agencies for external reporting. As the Title V program takes shape, stakeholders will become more interested in receiving up to date program information such as:

- Current fee levels
- Costs associated with program implementation

- Expenditure and revenue reconciliation
- Various performance indicators

Simply stated, the stakeholders, especially those that have mobilized into forming oversight committees, will want to know where their fees are going and how efficiently they are being used to administer the fee-based Title V program.

External Reporting: Measuring Performance

A challenge that will face Title V agencies as they develop external reporting procedures is identifying and measuring program performance criteria. Once Title V programs are implemented and underway, it is safe to assume stakeholders will soon be demanding financial and performance-based reports. Title V stakeholders may desire performance-based reports that answer questions such as:

- How many labor hours does it take to implement the Title V program for each permittee?
- How many days does it take to review a Title V permit?
- Are Title V-related labor and other costs decreasing or increasing over time compared to workload?

The air programs must take great care when developing their external reporting program, as the applicability of cost and performance data may vary widely across the Title V program. For example, a report showing the relationship between the total number of

permittees and the annual cost of Title V program implementation may provide misleading information as the required amount of labor hours (cost) may vary among Title V permittees.

For the most part, the benefits of performance tracking outweigh the potential pitfalls described above. States should work hard to develop external reporting processes that provide meaningful measures of performance, while still meeting the needs of Title V stakeholders.

External Reporting: New York as Example

The State of New York's Department of Environmental Conservation develops an annual report for the New York State Operating Permit Program (Title V). Selected portions are included in Appendix B. The New York report is a useful example of external reporting in practice. Presented each year to the New York State Legislature, the Governor and the Office of the State Comptroller (stakeholders), the report summarizes the Title V program's activity and includes both fiscal and performance-based criteria, such as the estimated versus actual costs of program implementation, the average number of permits issued annually, as well as future fiscal year projections.

Summary: External Reporting

Most agencies are in the process of implementing and refining their Title V programs and have not yet addressed external reporting. However, based on the

interviews conducted, the following similarities have been identified:

- Stakeholders such as permittees and regulatory agencies have not yet demanded external reporting from the Title V agencies as the program continues to be implemented.

- Governmental fund accounting systems support external reporting to be used for the Comprehensive Annual Financial Report (CAFR). However, due to the relatively small size of the Title V program, it is rarely identified in the CAFR.

- Some agencies have organized oversight committees to provide feedback to Title V-administering agencies. These committees will be the driving force in the creation of external reports for stakeholders in those states.

- Agencies will need to begin to develop external reporting to respond to requests from stakeholders.

CONCLUSION

The Clean Air Act Title V Operating Permit Program presents new requirements for state and local air quality agencies. Most of these requirements are a challenge to agencies that have historically managed grant-based programs such as Section 105. Fee-based programs need special considerations in terms of time keeping, cost allocation, accounting fund type selection, and reporting.

This study found that state and local air programs are making great strides in addressing the many financial management challenges associated with the Title V program. However, because the program is beginning the implementation phase, it is likely that state and local programs will need to adjust the financial management of the program as they gain more experience.

Conditions in the three primary financial management activities identified in the study are as follows:

1. Time Keeping and Cost Allocation

   - Air quality agencies must refine procedures for tracking labor and non-labor costs among Title V and non-Title V programs. Of those interviewed, all but one agency utilize time sheets to record labor costs incurred for Title V and non-Title V programs. Some of these systems are very sophisticated and interact with the management information system (MIS) to generate detailed reports.

- These agencies must also address the manner in which indirect costs are allocated to these programs. All individuals interviewed have procedures in place to record and allocate indirect labor and non-labor costs to appropriate Title V and non-Title V program accounts. State and local programs would benefit from documenting these procedures if they have not done so.

2. Accounting Fund Structures and Controls

- Air quality agencies must review their accounting structures and assess whether the current procedures are adequate for managing the resources of a fee-based program or if new accounting methods are required for program efficiency and/or compliance with Title V requirements.

- All agencies interviewed are currently employing acceptable methods of accounting for Title V resources independently of non-Title V programs. All but one of the agencies interviewed rely on special revenue accounts for Title V program management, while the remaining agency accounts for Title V via an expendable trust fund. Agencies should be aware that government accounting regulators may impose a fund definition that would necessitate a change in the Title V fund structure — changing Title V to an enterprise fund. Such a change will result in financial

reports for Title V that more closely reflect the fact that the Title V program is user fee supported.

3. Internal and External Reporting

- Agencies are challenged with identifying the financial data they require in internal program reports to manage the program. While the budget process will provide regular reporting on encumbrances against account codes, other detailed information will be available through the accounting system to evaluate costs and revenues on a regular basis.

- Many state and local programs have yet to become adept at manipulating the accounting system to provide management information. However, where programs are further along in implementation, it seems that internal tracking information is more readily available.

- External reporting is an area that, to a great extent, has not developed at the state and local level. As the programs move from the start-up period to the operation period, interests in providing external information will increase. While there are difficulties in overly simplistic performance measures that do not consider the normal variability of individual activities, the development of useful summary performance information is a worthwhile endeavor that Title V programs should undertake.

APPENDIX A

Excerpted from Governmental Accounting, Auditing and Financial Reporting (Government Finance Officers Association).

GENERAL FUND

The general fund is used to account for resources, traditionally associated with government, which are not required legally or by sound financial management to be accounted for in another fund.

NAME OF GOVERNMENT
GENERAL FUND

Comparative Statements of Revenues, Expenditures
and Changes in Fund Balances
For the fiscal years ended December 31, 19X4 and 19X3
(amounts expressed in thousands)

	19X4	19X3
Revenues:		
Taxes:		
Property	$14,133	$13,886
Sales	6,642	5,253
Franchise	4,293	4,126
Licenses and permits	2,041	1,820
Intergovernmental	5,770	4,469
Charges for services	2,300	2,335
Fines	808	521
Interest	623	476
Contributions	145	—
Payments in lieu of taxes	365	314
Drug forfeitures	75	—
Total revenues	37,195	33,200
Expenditures:		
Current:		
General government	4,232	3,844
Public safety	13,438	13,150
Highways and streets	3,735	3,389
Sanitation	3,726	3,404
Culture and recreation	5,899	6,167
Debt service:		
Principal	15	—
Bond issuance costs	150	—
Total expenditures	31,195	29,954
Excess of revenues over expenditures:	6,000	3,246

	19X4	19X3
Other financing sources (uses):		
Operating transfer in-electric fund	1,576	—
Operating transfers out:		
Debt service fund	(3,327)	(3,331)
Pipeline construction fund	(1,210)	—
Component unit	(25)	—
CDBG revitalization project fund	(63)	—
Capital leases	140	—
Sales of general fixed assets	5	—
Total other financing sources (uses)	(2,094)	(3,331)
Excess (deficiency) of revenues and other financing sources over (under) expenditures and other financing uses	3,096	(85)
Fund balances, January 1	1,807	1,892
Residual equity transfers out–fleet management fund	(45)	—
Fund balances, December 31	$ 4,858	$ 1,807

The notes to the financial statements are an integral part of this statement.

NAME OF GOVERNMENT
GENERAL FUND

Comparative Statements of Revenues, Expenditures and Changes in Fund Balances – Budget and Actual
For the fiscal years ended December 31, 19X4 and 19X3
(amounts expressed in thousands)

	19X4			19X3		
	Budget	Actual	Variance Favorable (unfavorable)	Budget	Actual	Variance Favorable (Unfavorable)
Revenues						
Taxes:						
Property	$14,007	$14,133	$ 126	$13,844	$13,886	$ 42
Sales	5,900	6,642	742	5,198	5253	55
Franchise	4,312	4,293	(19)	4,124	4,126	2
Licenses and permits	1,827	2,041	214	1,503	1,820	317
Intergovernmental	5,661	5,770	109	5,395	4,469	(926)
Charges for services	2,158	2,300	142	2,095	2,335	240
Fines	810	808	(2)	487	521	34
Interest	555	623	68	520	476	(44)
Contributions	—	145	145	—	—	—
Payments in lieu of taxes	345	365	20	314	314	0
Drug forfeitures	—	75	75	—	—	—
Total revenues	35,575	37,195	1,620	33,480	33,200	(280)
Expenditures:						
Current:						
General Government						
Council	110	92	18	94	113	(19)
Commissions	86	64	22	71	63	8
Manager	490	505	(15)	426	414	12
Attorney	380	387	(7)	216	206	10
Clerk	275	250	25	247	237	10
Personnel	356	304	52	274	249	25
Finance and admin.	904	868	36	846	830	16
Other–unclassified	2,256	1,762	494	1,884	1,732	152
Total general gov't.	4,857	4,232	625	4,058	3,844	214
Public safety:						
Police	6,513	6,354	159	6,026	6,801	(775)
Fire	6,040	6,031	9	5,521	5,415	106
Inspection	1,092	1,053	39	970	934	36
Total public safety	13,645	13,438	207	12,517	13,150	(633)
Highways and Streets:						
Engineering	814	796	18	777	762	15
Maintenance	3,052	2,939	113	2,681	2,627	54
Total highways & Sts.	3,866	3,735	131	3,458	3,389	69
Sanitation	3,848	3,726	122	3,426	3,404	22
Culture & recreation	5,950	5,899	51	5,477	6,167	(690)

	19X4			19X3		
	Budget	Actual	Variance Favorable (unfavorable)	Budget	Actual	Variance Favorable (Unfavorable)
Dept. service:						
Principal	—	15	(15)	—	—	—
Bond issuance costs	150	150	0	—	—	—
Total debt service	150	165	(15)	—	—	—
Total expenditures	32,316	31,195	1,121	28,936	29,954	(1,018)
Excess of revenues over expenditures	3,259	6,000	2,741	4,544	3,246	(1,298)
Other financing sources (uses):						
Operating transfers in	1,576	1,576	0	—	—	—
Operating transfers out:						
Debt service fund	(3,400)	(3,327)	73	(3,350)	(3,331)	19
Pipeline constr.fund	(1300)	(1,210)	90	—	—	—
Component unit	—	(25)	(25)	—	—	—
CDBG revitalization proj.	—	(63)	(63)	—	—	—
Capital leases	—	140	140	—	—	—
Sales of gen. fixed assets	34	5	(29)	—	—	—
Total other financing sources (uses)	(3,090)	(2,904)	186	(3,350)	(3,331)	19
Excess (deficiency) of revenues and other financing sources over (under) expenditures and other financing uses	169	3,096	2,927	1,194	(85)	(1,279)
Fund balances, January 1	1,807	1,807	0	1,892	1,892	0
Residual	(60)	(45)	15	—	—	—
Fund balances, Dec 31	$ 1,916	$ 4,858	$ 2,942	$ 3,086	$ 1,807	$(1,279)

The notes to the financial statements are an integral part of this statement.

NAME OF GOVERNMENT
GENERAL FUND

Comparative Balance Sheets
December 31, 19x4 and 19x3
(amounts expressed in thousands)

	19X4	19X3
Assets	$3,097	$ 557
Cash and cash equivalents	2,091	1,226
Investments		
Receivables (net of allowances for uncollectibles):		
Interest	92	48
Taxes:		
Property	86	74
Property—interest and penalties	11	4
Liens	25	19
Sales	830	800
Accounts	72	59
Intergovernmental:		
Federal	—	150
County	215	127
Due from other funds:		
Transportation fund	—	38
Water and Sewer fund	65	193
Fleet management fund	8	—
Due from component unit	12	—
Interfund receivables:		
Fleet management fund	8	—
Management information systems fund	24	—
Inventories	39	37
Advances to other funds:		
Fleet management fund	32	—
Management information systems fund	46	50
Total assets	6,753	3,382

	19X4	19X3
Liabilities and fund balances		
Liabilities:		
Accounts Payable	887	874
Compensated absences	225	201
Contracts payable	67	151
Due to other funds:		
Pipeline construction fund	335	—
Water and sewer fund	37	21
Fleet management fund	47	—
Management information systems fund	57	98
Deferred revenue:		
Interest	—	48
Property taxes	24	75
Interest and penalties-property taxes	10	3
Tax liens	25	19
Federal government	181	85
Total liabilities	1,895	1,575
Fund balances:		
Reserved for encumbrances	320	211
Reserved for senior recreation program	145	—
Reserved for drug enforcement	75	—
Reserved for advances	78	50
Unreserved, undesignated	4,240	1,546
Total fund balances	4,858	1,807
Total liabilities and fund balances	6,753	3,382

The notes to the financial statements are an integral part of this statement.

NAME OF GOVERNMENT
SPECIAL REVENUE FUNDS

Combining Statement of Revenues, Expenditures and
Changes in Fund Balances
For the fiscal year ended December 31, 19x4
(With comparative totals for the fiscal year ended December 19x3)
(amounts expressed in thousands)

	Trans-portation	Parks Main-tenance	CDBG Revitali-zation	—Totals— 19x4	19x3
Revenues:					
Motor fuel tax:	729	—	—	729	355
Alcoholic beverage tax	799	—	799	651	
Intergovernmental	100	—	338	438	28
Interest	77	39	—	116	70
Donations	—	149	—	149	239
Total revenue	906	987	338	2,231	1,343
Expenditures:					
Current:					
Highways and streets	742	—	—	742	—
Economic and physical Development	—	—	401	401	28
Culture and Recreation	—	1,001	—	1,001	605
Total expenditures	742	1,001	401	2,144	633
Excess (deficiency) of revenues over (under) expenditures	164	(14)	(63)	87	710
Other financing source:					
Operating transfer:					
General fund	—	—	63	63	5
Excess (deficiency) of revenues and other financing sources over (under) expenditures and other financing uses	164	(14)	—	150	71
Fund balances, January 1	744	480	5	1,229	514
Fund balances, December 31	908	466	5	1,379	1,229

The notes to the financial statements are an integral part of this statement.

Special Revenue Funds

Special revenue funds are used to account for specific revenues that are legally restricted to expenditures for particular purposes.

Transportation Fund — This fund is used to account for the government's share of motor fuel tax revenues and special state grants that are legally restricted to the maintenance of state highways within the government's boundaries.

Parks Maintenance Fund — This fund is used to account for private donations and alcoholic beverage tax revenues (approved by voters in 19X3) that are specifically restricted to the maintenance of the government's parks.

CDBG Revitalization Project Fund — This fund is used to account for the community development block grant that is funding the revitalization project for substandard housing in the government's jurisdiction.

NAME OF GOVERNMENT
SPECIAL REVENUE FUNDS

Combining Balance Sheet
December 31, 19x4
(with comparative totals for December 31, 19x3)
(amounts expressed in thousands)

	Trans-portation	Parks Main-tenance	CDBG Revitali-zation	—Totals— 19x4	19x3
Assets					
Cash and cash equivalents	65	146	—	211	188
Investments	1,174	403	—	1,577	1,144
Interest receivable	1	1	—	2	12
Cash-restricted	—	—	4	4	—
Intergovernmental receivable restricted	—	—	19	19	5
Total assets	1,240	550	23	1,813	1,349
Liabilities and fund balances					
Liabilities:					
Accounts payable	332	84	—	416	82
Due to other funds-general fund	—	—	—	—	38
Liabilities payable from restricted assets	—	—	18	18	—
Total liabilities	332	84	18	434	120
Fund balances:					
Reserved for encumbrances	353	8	5	366	159
Unreserved, undesignated	555	458	—	1,013	1,070
Total fund balances	908	466	5	1,379	1,229
Total liabilities and fund balances	1,240	550	23	1,813	1,349

The notes to the financial statements are an integral part of this statement.

ENTERPRISE FUNDS

Enterprise Funds are used to account for operations that are financed and operated in a manner similar to private business enterprises — where the intent of the government's council is that the costs of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or where the government's council has decided that periodic determination of net income is appropriate for accountability purposes.

Water and Sewer Authority Fund — This fund is used to account for the activities of the Water and Sewer Authority (a blended component unit of the NAME OF GOVERNMENT).

Electric Fund — This fund is used to account for the activities of the government's electric distribution operations.

NAME OF GOVERNMENT
ENTERPRISE FUNDS

Combining Balance Sheet
December 31, 19X4
(With comparative totals for December 31, 19X3)
(amounts expressed in thousands)

	Water and Sewer Authority	Electric	Totals 19X4	Totals 19X3
ASSETS				
Current Assets:				
Cash and cash equivalents	$ 1,366	$ 4,253	$ 5,619	$ 4,121
Cash with fiscal agent	123	—	123	—
Investments	14,610	1,795	16,405	8,879
Interest receivable	409	51	460	435
Accounts receivable (net of allowance for uncollectibles)	2,621	1,378	3,999	3,551
Due from other funds:				
General fund	37	—	37	39
Fleet management fund	2	—	2	—
Inventories	308	637	945	930
Total current assets	19,476	8,114	27,590	17,955
Restricted assets:				
Customer deposits	1,543	188	1,731	1,375
Revenue bond operations and maintenance account	1,294	—	1,294	1,023
Revenue bond construction account	18,542	—	18,452	—
Revenue bond current debt service account	3,706	—	3,706	1,380
Revenue bond future debt service account	737	—	737	523
Revenue bond renewal and replacement account	1,632	—	1,632	1,165
Total restricted assets	27,454	188	27,642	5,466
Deferred charges	568	—	568	469
Fixed assets:				
Land	604	451	1,055	1,055
Buildings and system	20,928	7,043	27,971	19,817
Accumulated depreciation–buildings and system	(2,476)	(3,013)	(5,489)	(4,769)
Improvements other than buildings	1,250	—	1,250	1,250
Accumulated depreciation–improvements other than buildings	(342)	—	(342)	(188)
Machinery and equipment	104,283	1,094	105,377	104,761

	Water and Sewer Authority	Electric	Totals 19X4	Totals 19X3
Accumulated depreciation–machinery and equipment	(14,723)	(558)	(15,281)	(13,429)
Construction in progress	7,118	—	7,118	—
Fixed assets (net ofaccumulated depreciation)	116,642	5,017	121,659	108,407
Total assets	$164,140	$13,319	177,459	132,387
LIABILITIES AND EQUITY				
Current liabilities:				
Accounts payable	$ 1,237	$1,130	$ 2,367	$ 2,281
Compensated absences payable	374	16	390	378
Retainage payable	536	—	536	—
Due to other funds:				
General fund	65	—	65	193
Fleet management fund	17	—	17	—
Management info. sys. fund	5	—	5	14
Intergovernmental payable	—	—	—	11
Matured bonds payable	68	—	68	—
Matured interest payable	55	—	55	—
Accrued interest payable	1,045	—	1,045	1,100
General obligation bonds payable–current	1,480	—	1,480	1,360
Capital leases payable–current	23	—	23	—
Total current liabilities	4,905	1,146	6,051	5,337
Current liabilities payable from restricted assets:				
Customer deposits payable	1,543	188	1,731	1,375
Revenue bonds payable	1,484	—	1,484	530
Accrued interest payable	1,331	—	1,331	448
Total current liabilities payable from restricted assets	4,358	188	4,546	2,353
Noncurrents liabilities:				
General obligation bonds payable (net of unamortized discounts)	30,818	—	30,818	23,798
Revenue bonds payable (net of unamortized discounts)	31,975	—	31,975	8,580
Capital leases payable	78	—	78	—
Total noncurrent liabilities	62,871	—	62,871	32,378
Total liabilities	72,134	1,334	73,468	40,068

	Water and Sewer Authority	Electric	Totals 19X4	Totals 19X3
Equity:				
Contributed capital:				
Government	4,033	—	4,033	803
Customers	14,062	—	14,062	13,854
Developers	35,241	3,138	38,379	34,293
Intergovernmental	5,588	—	5,588	5,588
Total contributed capital	58,924	3,138	62,062	54,538
Retained earnings:				
Reserved for revenue bond operations and maintenance	1,294	—	1,294	1,023
Reserved for revenue bond current debt service	891	—	891	402
Reserved renewal and replacement	1,632	—	1,632	1,165
Unreserved	29,265	8,847	38,112	35,191
Total retained earnings	33,082	8,847	41,929	37,781
Total equity	92,006	11,985	103,991	92,319
Total liabilities and equity	$164,140	$13,319	$177,459	$132,387

The notes to the financial statements are an integral part of this statement.

NAME OF GOVERNMENT
ENTERPRISE FUNDS

Combining Statement of Revenues, Expenses and Changes in Retained Earnings
for the fiscal year ended December 31, 19X4
(With comparative totals for the fiscal year ended December 31, 19X3)
(amounts expressed in thousands)

	Water and Sewer Authority	Electric	Totals 19X4	Totals 19X3
Operating revenues:				
Charges for sales and services:				
Water sales	$ 9,227	—	$ 9,227	$ 7,588
Sewer charges	5,671	—	5,671	4,344
Tap fees	1,521	—	1,521	1,155
Electric sales	—	15,250	15,250	15,110
Total operating revenues	16,419	15,250	31,669	28,197
Operating expenses:				
Costs of sales and services	6,997	10,772	17,769	16,879
Administration	3,137	1,482	4,620	4,342
Depreciation	2,436	318	2,754	2,597
Total operating expenses	12,570	12,573	25,143	23,818
Operating income	3,849	2,677	6,526	4,379
Nonoperating revenues (expenses):				
Intergovernmental	350	46	396	172
Interest revenue	1,753	523	2,276	2,357
Interest expense	(3,439)	—	(3,439)	(2,765)
Bond issuance costs	(25)	—	(25)	(10)
Loss on sales of fixed assets	(10)	—	(10)	—
Total nonoperating revenues (expenses)	(1,371)	569	(802)	(246)
Income before operating transfers	2,478	3,246	5,724	4,133
Transfer (to) other funds:				
General fund	—	(1,576)	(1,576)	—
Net income	2,478	1,670	4,148	4,133
Retained earnings, January 1	30,604	7,177	37,781	33,648
Retained earnings December 31	$33,082	$ 8,847	$41,929	$37,781

The notes to the financial statements are an integral part of this statement.

NAME OF GOVERNMENT
ENTERPRISE FUNDS

Combining Statement of Cash Flows
For fiscal year ended December 31, 19X4
(With comparative totals for fiscal year ended December 31, 19X3)
(amounts expressed in thousands)

	Water and Sewer Authority	Electric	Totals 19X4	Totals 19X3
Cash flows from operating activities:				
Cash received from customers	$16,151	$15,097	$31,248	$27,364
Cash paid to suppliers	(5,813)	(10,558)	(16,371)	(16,064)
Cash paid for quasi-external transactions	(1,202)	—	(1,202)	—
Cash paid to employees	(3,117)	(1,903)	(5,020)	(4,338)
Net cash provided by operating activities	6,019	2,636	8,655	6,962
Cash flows from noncapital financing activities:				
Transfer to general fund	—	(1,576)	(1,576)	—
Subsidy from federal grant	350	46	396	172
Net cash provided (used) by noncapital financing activities	350	(1,530)	(1,180)	172
Cash flows from capital and related financing activities:				
Proceeds from general obligation bonds	8,423	—	8,423	—
Proceeds from revenue bonds	34,150	—	34,150	—
Principal payments–bonds	(11,170)	—	(11,170)	(1,885)
Principal payments–capital leases	(12)	—	(12)	—
Interest paid	(2,310)	—	(2,310)	(2,887)
Proceeds from sales of fixed assets	5	—	5	—
Purchase of fixed assets	—	(494)	(494)	(1,637)
Capital lease obligation down payments	(6)	—	(6)	—
Construction (including capitalized interest costs)	(11,396)	—	(11,396)	—
Contributed capital	4,294	—	4,294	6,744
Net cash provided (used) by capital and related financing activities	21,978	(494)	21,484	335
Cash flows from investing activities:				
Proceeds from sale of investments	1,568	2,038	3,606	2,987
Purchase of investments	(23,860)	(2,276)	(26,136)	(9,896)
Interest received	1,347	593	1,940	2,316
Net cash provided (used) by investing activities	(20,945)	355	(20,590)	(4,593)

	Water and Sewer Authority	Electric	Totals 19X4	Totals 19X3
Net increase (decrease) in cash and cash equivalents	7,402	967	8,369	2,876
Cash and cash equivalents, January 1 (including $8,611 in restricted accounts)	2,698	3,474	6,172	3,296
Cash and cash equivalents, December 31 (including $188 in restricted accounts)	$10,100	$ 4,441	$14,541	$ 6,172

Reconciliation of Operating Income to Net Cash Provided by Operating Activities

	Water and Sewer Authority	Electric	Totals 19X4	Totals 19X3
Operating income	$ 3,849	$ 2,677	$ 6,526	$ 4,379
Adjustments to reconcile operating income to net cash provided by operating activities:				
Depreciation expense	2,436	318	2,754	2,597
(Increase) in accounts receivable	(508)	(153)	(661)	(40)
Increase in due from other funds	—	—	—	(11)
(Increase) in allowance for uncollectible accounts	213	—	213	110
(Increase) decrease in inventories	153	(168)	(15)	(100)
Increase in customer deposits	233	12	245	84
Increase (decrease) in accounts payable	133	(47)	86	(34)
(Increase) in amounts payable related to equipment purchase	(374)	—	(374)	—
Increase (decrease) in compensated absences payable	15	(3)	12	(2)
Increase (decrease) in inter-governmental payables	(11)	—	(11)	4
Increase (decrease) in due to other funds	(120)	—	(120)	5
Total adjustments	2,170	(41)	2,129	2,583
Net cash provided by operating activities	$ 6,019	$ 2,636	$ 8,655	$ 6,962
Noncash Investing, Capital and financing Activities				
Borrowing under capital lease	101	—		
Contributions of fixed assets from government	3,230	—		
Purchase of equipment on account	374	—		

The notes to the financial statements are an integral part of this statement.

Trust and Agency Funds

Trust funds are used to account for assets held by the government in a trustee capacity. Agency funds are used to account for assets held by the government as an agent for individuals, private organizations, other governments and/or other funds.

Senior Citizens' Transportation Fund — This fund is used to account for donations that are received pursuant to a trust agreement that restricts the use of those donations to providing subsidies for senior citizens' transportation to special government sponsored events.

Perpetual Care Fund — This fund is used to account for principal trust amounts received and related interest income. The interest portion of the trust can be used to maintain the community cemetery.

Public Safety Employees Retirements System Fund — This fund is used to account for the accumulation of resources for pension benefit payments to qualified public safety employees.

Deferred Compensation Fund — This fund is used to account for assets held for employees in accordance with the provisions of Internal Revenue Code Section 457.

NAME OF GOVERNMENT
TRUST AND AGENCY FUNDS

Combining Balance Sheet
December 31, 19X4
(With comparative totals for December 31, 19X3)
(amounts expressed in thousands)

	Expendable Trust	Non-Expendable Trust	Pension Trust	Agency	Totals	
	Senior Citizens' Transportation	Perpetual Care	Public Safety Employees	Deferred Compensation	19X4	19X3
Assets						
Cash and cash equivalents	$ 11	$ 231	$ 33	$ 18	$ 293	$ 87
Investments	41	1,752	14,335	1,198	17,327	15,394
Interest receivable	6	82	346	—	434	163
Total assets	$ 58	$ 2,066	$ 14,714	$ 1,216	$ 18,054	$ 15,644
Liabilities and fund balances						
Liabilities:						
Accounts payable	$ 7	$ 13	$18	—	$ 38	$ 36
Deferred compensation benefits payable	—	—	—	1,216	1,216	900
Total liabilities	7	13	18	1,216	1,254	936
Fund balances:						
Reserved for perpetual care	—	1,102	—	—	1,102	1,102
Reserved for employees retirement system	—	—	16,802	—	16,802	14,248
Unreserved, undesignated	51	951	(2,106)	—	(1,104)	(642)
Total fund balances	51	2,053	14,696	—	16,800	14,708
Total liabilities and fund balances	$ 58	$ 2,066	$ 14,714	$ 1,216	$ 18,054	$ 15,644

The notes to the financial statements are an integral part of this statement.

NAME OF GOVERNMENT
SENIOR CITIZENS' TRANSPORTATION
EXPENDABLE TRUST FUND

Comparative Balance sheets
December 31, 19X4 and 19X3
(amounts expressed in thousands)

	19X4	19X3
Assets		
Cash and cash equivalents	$ 11	$ 16
Investments	41	33
Interest receivable	6	2
Total assets	$ 58	$ 51
Liabilities and fund balances		
Liabilities:		
Accounts payable	$ 7	$ 2
Fund balances:		
Unreserved, undesignated	51	49
Total liabilities and fund balances	$ 58	$ 51

The notes to the financial statements are an integral part of this statement.

NAME OF GOVERNMENT
SENIOR CITIZENS' TRANSPORTATION
EXPENDABLE TRUST FUND

Comparative Statements of Revenues, Expenditures
and Changes in Fund Balances for fiscal years ended
December 31, 19X4 and 19X3
(amounts expressed in thousands)

	19X4	19X3
Revenues:		
Interest	$ 6	$ 2
Donations	82	52
Total revenues	88	54
Expenditures:		
Current:		
General government	86	29
Excess of revenues over expenditures	2	25
Fund balances, January 1	49	24
Fund balances, December 31	$ 51	$ 49

The notes to the financial statements are an integral part of this statement.

APPENDIX B

Excerpted from New York State
Operating Permit Program, Annual Report 1996 (pp. 6-13).

New York State Operating Permit Program
1995 Annual Report

Contents Page

FISCAL REPORT

Operating Permit Program Fee

Beginning in 1994, Title V facilities were required to pay the tonnage based OPP fee, pursuant to section 72-0303 of the ECL. OPP fees collected are deposited in the OPP Account of the Clean Air Fund established by State Finance Law. Non-Title V sources continue to pay Air Quality Control Program fees that are deposited to the Environmental Regulatory Account established in 1983.

Both the federal Act and the NYSCACA require fee revenues sufficient to cover all reasonable direct and indirect costs required to develop, administer and enforce the State's Title V permit program. Once EPA approves the State's plan for delegation of the Title V program to the State, Title V/OPP fees can only be used to fund Title V permit program activities. Prior to approval, Title V activities can be funded from any sources available to the State. For fiscal years 1994/95 and 1995/96, the DEC's Title V workload has been funded from he General Fund, the Utility Regulatory Account, Federal Funds and the OPP Account.

In 1994/95, Title V activities constituted 35% of the DEC's air program effort, however the OPP Account only paid for 26% of DEC's air program costs. It is anticipated that as newly authorized positions funded from the OPP Account are filled during 1995/96, the amount expended from the OPP Account will approach 100% of the Title V program cost. Many of the employees who will be recruited to the new OPP jobs will be transferring from existing positions currently funded by the Section 105 federal grant. Section 105 funds may not be used for Title V costs once federal approval of the OPP is obtained. Those grant funds are expected to be reduced accordingly by the federal government.

The State legislation requires that commencing January 1, 1994 and annually thereafter, the Department use a formula to calculate the fee per ton of emissions that subject sources are required to pay and that the calculation and fee be established as a rule through publication in the Environmental Notice Bulletin. The fee is calculated by dividing the current State fiscal year appropriation for the OPP by the total tons of emissions of regulated air contaminants from sources subject to the OPP during the prior calendar year, with consideration given to any surplus or deficit in the OPP Account of the Clean Air Fund, any loan repayment from the Mobile Source Account of the Clean Air Fund and the rate of collection of bills issued for the fee. The fee is limited to a maximum fee of $25 per ton, increased by the percentage, if any, by which the Consumer Price Index (CPI) exceeds the CPI for the prior year. Based upon this ceiling, the 1994 fee was $25.69 and the 1995 fee was $26.44.

Clean Air Compliance Act Reporting Requirements

The NYSCACA specifies the fiscal information that this report must contain. These are as follows; the actual direct and indirect costs and revenues received in State fiscal year (SFY) 1994/95; SFY 1995/96 estimates for direct and indirect costs, revenues and the year end balance of the Clean Air Fund's OPP Account; SFY 1996/97 projections for direct and indirect costs and tonnage of pollutants that will be subject to OPP fees; and finally, a recommendation on an adjustment to the fees to assure adequate funding during future fiscal years. Each of these requirements is addressed under subheadings below.

Cost figures provided in this report are actual or projected expenditures between April 1 and March 31 for a given State fiscal year. Expenditure figures rather than appropriations are used in this report since expenditures provide more accurate reflection of actual program costs. Appropriations only reflect the level of spending the Legislature has authorized in a particular year, and authorized funds may not be disbursed in that year. A legislative appropriation is usually based on anticipated revenues. If actual revenues generated by the OPP fees are less than the appropriation, the full appropriation cannot be spent. Expenditures may be made against a prior year's appropriations, current year appropriations or a reappropriation depending on when the liability was incurred.

State Fiscal Year 1994/95

The actual direct and indirect costs of the OPP in SFY 1994/95 were $10,687,799. This amount includes expenditures by the Departments of Environmental Conservation, Health, Economic Development, and the Environmental Facilities Corporation. A detailed summary is included in Figure 1. The sources of funds for the program were OPP Account $7,413,029 with the balance coming from the General Fund, Federal Funds, and the Utility Regulatory Account. Total revenues received by the OPP account during SFY 1994–95 were $11,084,735. Revenues included fees, interest and penalties.

State Fiscal Year 1995/96

The estimated direct and indirect costs of the OPP in SFY 1995/96 are $13,653,881. This amount reflects expenditures by the Departments of Environmental Conservation, Health, Economic Development, and the Environmental Facilities Corporation. A detailed summary is included in Figure 2.

Revenues anticipated to be received in SFY 1995-96 total $10,427,629. This amount is based on emission tonnage billing of 453,320 tons times a per ton fee of $26.44 minus a 13% uncollectible figure. This revenue estimate does not in-

clude any additional funds that may be collected from prior year fees, penalties and interest.

DEC estimates that the balance in the OPP Account at the end of SFY 1995/95 will be $4,564,498. This estimate is based on:

Beginning balance	$7,711,618
Anticipated revenues	$10,427,629
Projected expenditures	$13,653,881
Ending balance	$4,485,366

State Fiscal Year 1996/97

The estimated direct and indirect costs of the OPP in SFY 1996/96 are $14,590,658. This amount reflects projected expenditures by the Departments of Environmental Conservation, Health, Economic Development and the Environmental Facilities Corporation. A detailed summary is included in Figure 3.

Under current legislation, revenues estimated to be received in SFY 1996/97 total $10,522,530. This amount is based on an emission tonnage billing of 430,000 tons times a per ton fee of $27.19 minus a 10% uncollectible figure. The fee of $27.19 is the maximum allowed by the ceiling currently prescribed in the NYSCACA.

Recommended Fee Adjustment

The 1996/97 appropriations requested by DEC for the OPP represent no further enhancement. Rather, the request is merely for the full annual value of the program levels authorized on a part-year basis by the 1993/94 and 1994/95 budgets. DEC is making no recommendation for an adjustment at this time.

FIGURE 1:
1994–1995 OPERATING PERMIT ACTUAL COSTS

Category	Personal Service	Fringe Benefits	Nonpersonal Service	Capital	Total
Direct Program Costs					
Environmental Conservation	4,234,341	1,253,520	985,050	343,708	6,816,619
Health	448,686	137,836	116,543	0	703,065
Economic Development	222,649	68,398	441,716	0	732,763
Environmental Facilities Corp.	0	0	556,853	0	556,853
Total Direct Costs	4,905,676	1,459,754	2,100,162	343,708	8,809,300
Indirect Program Costs					
Environmental Conservation					1,716,141
Health					150,736
Economic Development					111,622
Environmental Facilities Corp.					0
Total indirect costs					1,878,499
Total Operating Permit Program Costs					10,687,799

ASSUMPTIONS:

DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

Direct costs were based on Time and Activity records including adjustments made by supervisory staff. It was determined that 35% of Air staff time was devoted to Operating Permit Program activities in SFY 1994–95. This percentage was applied to the total Air expenditure in SFY 1994–95. Indirect costs were calculated at 31.8% of personal service and fringe benefit costs and reflect costs associated with agency operations, auxiliary support staff and other state overhead responsibilities.

Departments of Health and Economic Development: Reports containing expenditure information were provided to DEC by these agencies.

FIGURE 2:
1995–96 OPERATING PERMIT ESTIMATED COSTS

Category	Personal Service	Fringe Benefits	Subtotal	Nonpersonal Service	Capital	Total
Direct Program Costs						
Environmental Conservation	4,476,601	1,399,833	5,876,434	1,879,788	1,500,000	9,256,222
Health	249,579	78,043	327,622	15,312	0	243,934
Economic Development	403,345	126,126	529,471	613,731	0	1,143,202
Environmental Facilities Corp.	0	0	0	1,040,614	0	1,040,614
Total Direct Costs	5,129,525	1,604,002	6,733,527	3,549,445	1,500,000	11,782,972
Indirect Program Costs						
Environmental Conservation				1,754,116	0	1,754,116
Health				97,795	0	97,795
Economic Development				18,998	0	18,998
Environmental Facilities Corp				0	0	0
Total Indirect Costs				1,870,909	0	1,870,909
Total Operating Costs	5,129,525	1,604,002	6,733,527	5,420,354	1,500,000	13,653,881

ASSUMPTIONS:

Environmental Conservation:
Personal Service expenditures reflect actual carry-in from 1994–95 plus 12 month projected expenditures for 66 positions carried over from 1994–95 and 3 month projected expenditures for 42 direct positions to be filled during the current fiscal year.

Funding for 11 positions from SFY 1994–95 and 8 positions from SFY 1995–96 that are assigned to the Division of Regulatory Services and other support offices is shown under the Indirect Program costs heading.

Nonpersonal service expenditures reflect actual carry-in from 1994–95 projected 12 month disbursements against 1995–6 appropriations (88% of planned in 12 month period).

Capital expenditures assume 100% of planned amount.

Environmental Facilities Corporation
Nonpersonal service expenditures reflect actual carry-in from 1994–95 plus projected 12 month disbursements against 1995-96 appropriations. (88% of planned in 12 month period).

Fringe Benefits/Indirect:
Fringe benefits for all agencies are calculated at 31.27% of personal service
Indirect costs for Environmental Conservation and Health are calculated at 29.85% of personal service and fringe benefits.

Indirect costs for Economic development are 4.71% of personal service.

FIGURE 3:
1996–97 OPERATING PERMIT ESTIMATED COSTS

Category	Personal Service	Fringe Benefits	Subtotal	Nonpersonal Service	Capital	Total
Direct Program Costs						
Environmental Conservation	5,210,708	1,629,388	6,840,096	1,929,032	1,000,000	9,809,128
Health	249,579	78,043	327,622	75,312	0	402,934
Economic Development	399,366	124,882	524,248	558,296	0	1,082,544
Environmental Facilities Corp.	0	0	0	1,000,000	0	1,000,000
Total Direct Costs	5,859,653	1,832,313	7,691,966	3,602,640	1,000,000	12,294,606
Indirect Program Costs						
Environmental Conservation				2,041,769	0	2,041,769
Health				97,795	0	97,769
Economic Development				156,488	0	156,488
Environmental Facilities Corp				0	0	0
Total Indirect Costs				2,296,052	0	2,296,052
Total Operating Costs	5,859,653	1,832,313	7,691,966	5,898,692	1,000,000	14,590,658

ASSUMPTIONS:
Planned expenditures for all agencies reflect projected carry-in amounts against 1995-96 appropriations plus 99% of requested personal service and 88% of non-personal service appropriations.

Capital expenditures are estimated at 1,000,000.

FRINGE BENEFITS/INDIRECT:
Fringe benefits for all agencies are calculated at 31.27% of personal service.
Indirect costs for all agencies are calculated at 29.85% of personal service and fringe benefits.

STATE FISCAL YEAR 1994/95 DETAILS AND PROJECTIONS

The NYSCACA requires DEC to report the number of Operating Permit applications on which final action was taken in the previous fiscal year with details on average review time per permit, number of person hours spent per permit and the number of complete permit applications filed. Since the State did not have a federally approved OPP in effect in SFY 1994/95, no Title V permits were reviewed or issued and actual data on average review time per permit is not available. However, the Department has projected, to the extent possible, the minimum number of permit reviews that will be necessary to implement the program over the next five years. These are reflected in Figure 4.

FIGURE 4:
PROJECTED NUMBER OF PERMITS SUBJECT TO REVIEW IN ORDER TO IMPLEMENT TITLE V

Permit Type	Permits to be reviewed over the next 5 years	Average Review Time* (days/permit)
Existing major facilities	876	40
Nox and VOC Reasonable Achievable Technological Cont. (RACT) permit modificaitons	200	15
Title V General Permits	150	10
New source review (Title I) includesPSD reviews, netting/trading permit moditifations	100	80
Known MACT (Section 112) sources	150**	30
Capping out of Title V and RACT	9650***	1

* This time represents estimated technical review time by Division of Air staff only. Specific permit applicaitons could take considerably more or less time depending on the size and complexity of the facility. Also the review time does not include that required by Division of Regulatory Affairs to process and issue permits.

** The numbers in the table are estimates of the effort required to review permits for six categories of sources for which MACT standards have been adopted by EPA. There are 174 categories for which MACT standards are utilmately required to be developed. As new MACT standards are promulgated there will be a significant increase in both the number of facilities that require permits and the effort necesary to review those permits.

*** This includes the approximately 6000 New York City sources that will need modifications to their permits in order to cap out of Title V.

OTHER INVOLVED AGENCIES

The NYSCACA does not specifically require that the activities of other involved agencies be reported. However, the Department of Health, Department of Economic Development and the Environmental Facilities Corporation were asked to report so that the direct costs of the fiscal portion of this report could be determined. Expenditures reported by those agencies have been included in this report. Their submissions to DEC are included as appendices to this report.

The Environmental Finance Center is part of the Coastal and Environmental Policy Program (CEPP) and is hosted by the Maryland Sea Grant College.

About CEPP

The Coastal and Environmental Policy Program is a non-degree granting program composed of the University of Maryland Sea Grant Program, the School of Public Affairs, the College of Agriculture, the School of Law, and the Center For Environmental and Estuarine Studies. CEPP provides informational, educational and research policy analysis and technical problem-solving assistance.

About Sea Grant

The National Sea Grant Program encourages wise stewardship of our marine resources through research, education, outreach and technology transfer. Maryland Sea Grant is one of twenty-nine Sea Grant programs across the country — part of a national partnership supported jointly by state and federal funds, from the National Oceanic and Atmospheric Administration.

About the EFC

With support from the U.S. Environmental Protection Agency (EPA) and the Maryland Sea Grant College Program, the Environmental Finance Center (EFC) was created to train, provide assistance and act in an advisory capacity to state and local governments on issues related to environmental finance.

The Center promotes a comprehensive and integrative look at environmental finance from a strategic management perspective that suggests that sound environmental practices encompass a broad spectrum of activities. Activities such as needs assessments, issue prioritization, identification of relevant environmental regulations and compliance issues, development of capital facilities plans, identification of revenue sources, and community participation are precursors to securing funding that form part of the EFC's holistic approach.

To find out more about the Environmental Finance Center visit our web page: http://www.mdsg.umd.edu/MDSG/EFC/index.html

Title V of the Clean Air Act

One of the most important benefits of the new Title V operating permits program of the Clean Air Act is that the program itself will ensure that adequate resources are available for its administration. By collecting fees from stationary air pollution sources in exchange for permits which regulate levels of emissions, states and localities can achieve a number of desired goals:

- Use revenues generated by those regulated to monitor, enforce, and report on stationary air emissions
- Create incentives for those sources to reduce emissions by forcing permit holders to internalize the costs of emitting air pollutants
- Begin to track air pollution control requirements and performance so it becomes easier to manage programs across media, such as air, water, and land

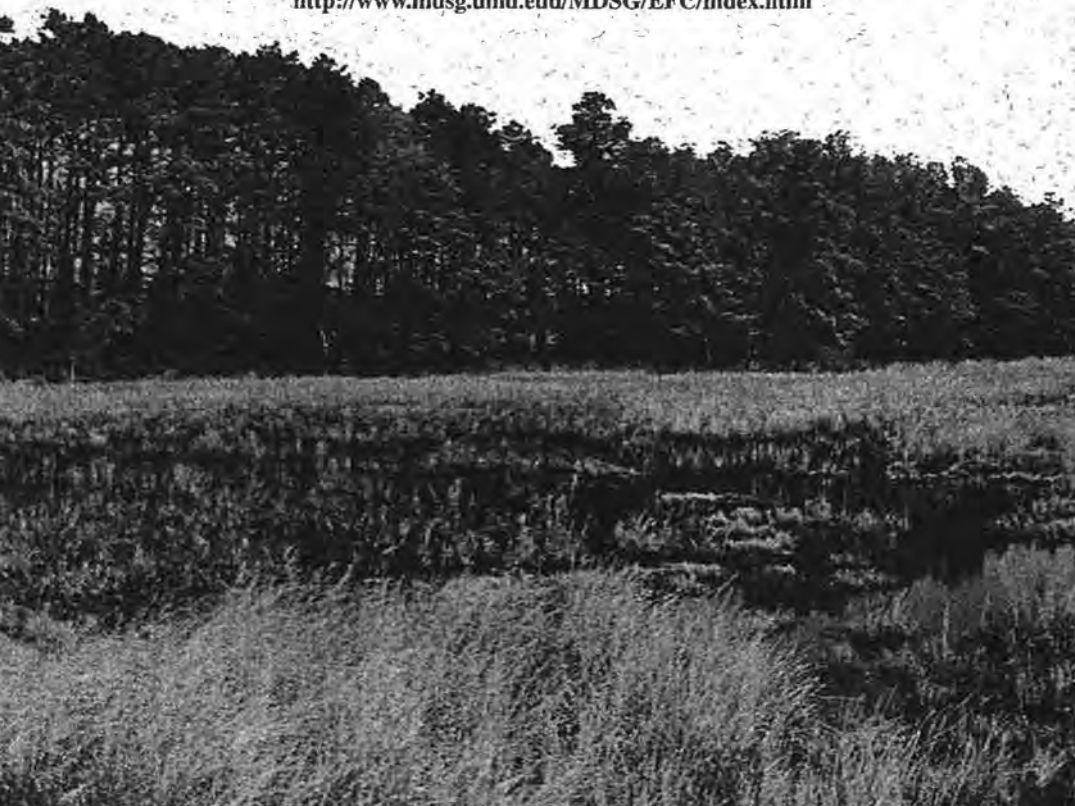
If revenues generated from a program go to support other state efforts, then not only will the program suffer from lack of resources, but those paying the permit fees will not receive the level of service that they are paying for.

This handbook identifies ways a state or local air program agency can collect, segregate, and account for Title V fees so that they are not commingled with other efforts.

EPA Sea Grant

Issues in Environmental Finance

Environmental Finance Center ■ University of Maryland System
http://www.mdsg.umd.edu/MDSG/EFC/index.html



Appendix J. BAAQMD Record Retention Schedule

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Record Retention Schedule

This schedule is a catalog of all record types employed by the Bay Area Air Quality Management District (Air District) in carrying out the work of the agency. Pursuant to California Government Code section 60201, this schedule and any revisions to the schedule must be adopted by the Air District Board of Directors. This schedule is a component of the Air District's records management program. Guidelines for the records management program are set forth in the Air District Administrative Code, Division I, Operating Policies and Procedures, Section 11. The purpose of this program is to maintain records in a manner that furthers the public purposes of the Air District while ensuring prompt and accurate retrieval of records and compliance with all legal requirements.

For each record type, the schedule establishes a retention period. Certain records will be kept permanently because of their continuing importance to the Air District and the public. For records not kept permanently, the schedule establishes a retention period. The retention period is the period of time that the Air District will keep a record after its "use period" is over. For most records, use occurs at a point in time, with the retention period beginning after this brief active use period. Most of the records in this schedule are of this type.

For certain records, the use period extends over a significant period of time. Examples include building blueprints, equipment manuals, contract documents, and grant documents. For these records, the schedule indicates the triggering event for the running of the retention period.

The substance of a record, rather than the format or medium in which it is held, determines the appropriate category for the record. Thus, paper records, emails, and electronic data alike acquire the retention period of the applicable substantive category.

Record type	Including these specific records:	Retention period
	General	
General correspondence	General interoffice memoranda, general correspondence	3 years
Policies, procedures and workbooks	Policy documents, including enforcement policies and procedures, BACT/TBACT workbook, permit handbook, and source test protocols and plans	Revised + 7 years
Requests from public	Public records requests and responses	3 years
	Boards and Executive	
Board audio and video records	Audio and video records of Advisory Council, Board of Directors, and committee meetings; Hearing Board hearings	1 year
Board files	Oaths of office, expense reports for Advisory Council, Board, Hearing Board, Board member correspondence, Board member travel authorizations and Board expense claims	End of term + 7 years
Board records	Board, Board committees, Hearing Board, Advisory Council and Advisory Council committees: agenda packages, minutes, reports, resolutions, and rosters	Permanent
Executive files	Chronological correspondence files, conflict of interest forms, lobbyist employer/lobbyist registration	7 years
Hearing Board docket	All case related files	Final compliance date + 7 years
Legislative and bill files	Bill file (documents, analyses, correspondence), Legislative Committee records	3 years
	Administrative	
Bonds, insurance and warrants records	Bonds, property and liability insurance policies and documentation, warrants	Permanent
Building records	Building blueprints, building equipment information, building maintenance information, construction drawings & information, drawings – space plans, maintenance working records.	Life of building + 7 years
Cal OSHA reports	Cal OSHA reports and citations	7 years

Record type	Including these specific records:	Retention period
Contracts	Contract files and any related task orders or purchase orders, and any related bids, RFPs, RFQs or accepted proposals, contractor timesheets, contractor logs	Contract final expiration + 7 years
Fleet vehicle records	Vehicle maintenance expenses, vehicle mileage reports, vehicle request forms, vehicle registration fees, travel trip slips	Life of vehicle + 3 years
Mailroom records	Certified mail log, certified mail receipts – fee invoices, fee billing invoices, fee billing problem resolution files, returned mail (fee invoices and validations)	3 years
Physical security reports	Security guard activity reports	3 years
Rejected bids	RFPs/RFQs/evaluations/unaccepted proposals and bids	Fiscal year of bid + 3 years
Stockroom records	Stockroom requisitions	1 year
Tort and workers compensation claims	Tort claim liability files, worker's compensation files	Until closed + 7 years
	Emission Monitoring, Source Testing, and Ambient Monitoring	
Emission monitoring records	Continuous emission monitoring (CEMS) monthly reports, CEM indicated excesses – source test evaluation forms, CEM approvals pursuant to Regulation 1, Section 522	Life of facility + 7 years
Laboratory samples and air quality monitoring data	PM 2.5 filters and PM 10 filters collected from sampling equipment, ambient air monitoring data – strip charts, air monitoring station log books, asbestos samples submitted for analysis, instrument log books, laboratory notebooks, results, methods of analysis, photo-micrographics, standard operating procedures	7 years
Meteorological and air monitoring data	Ambient air monitoring data – data logger data, forecasts, meteorological monitoring data, ground level monitoring data; ground level monitoring audit reports	Permanent
Meteorological reports	Meteorological reports	1 year

Record type	Including these specific records:	Retention period
QA/QC and calibration records	Lab, source test, and air monitoring equipment calibration records and QA/QC records, quality assurance manual	7 years
Source test results and raw data	Source test results and raw data from both the District and outside contractors, field accuracy test results, raw data, and reports, contractor-conducted source test notifications (ref: Volume IV, V, MOP)	Life of facility + 7 years
Technical equipment records	Manuals and maintenance records, 10% quality assurance analysis reports, additional records required by NVLAP accreditation program, audit records, blind sample analysis reports, inter-laboratory analysis reports, maintenance and calibration reports, proficiency test, quality control charts and data	Life of equipment + 3 years
	Enforcement	
Activity authorization	Open burns, exemption petitions, tank pulls/excavations, PERP, landfill reports	7 years
Activity authorization	Asbestos dust mitigation plans, asbestos removal, naturally occurring asbestos reports	Permanent
Complaints	All complaint information including wood smoke and smoking vehicle complaints	7 years
Compliance records	Compliance advisories and compliance reports required by regulation (Regs. 8-5, 8-10, 8-17, 8-18, 8-40, 9-10)	7 years
Flare records	Flare minimization – approved plans (Reg. 12-12), flaring notifications and reports (Reg. 12-12), plan review documents (Reg. 12-12), flare monitoring reports (Reg. 12-11)	7 years
Inspection records	Inspection reports, internal correspondence on inspections	7 years
Title V reports	Title V semi-annual and annual reports, Title V 10-day and 30-day deviation reports	7 years
Violation records	Notice of Violation files and Notice to Comply files, including all supporting documentation	Lesser of 25 years or life of facility + 7 years

Financial

Accounts payable - general	General accounts payable invoices, general checks-cancelled or voided, Board of Directors travel and meeting expenses, credit card payments and records, travel expense reimbursement requests, fixed assets invoices	7 years
Accounts payable check register, reports	Accounts payable check register, accounts payable general ledger post report, accounts payable journal voucher report	3 years
Accounts payable - grants	Grant accounts payable files	End of project + 10 years (longer if required by grantor)
Accounts receivable - general	Bank check deposits/permit check deposits, supporting documents for check deposits, credit card reports and supporting documents	5 years
Accounts receivable - other	Wire transfers/NSF checks, other accounts receivable reports/registers	3 years
Budget - adopted	Annual adopted budget	Permanent
Budget - other	Draft budget, proposed budget and supporting documents, budget transfers and adjustments	3 years
Deposit records - general	General monthly bank statements, general bank reconciliations	7 years
Deposit records - grants	Grant bank statements and related records	End of project + 10 years (longer if required by grantor)
Fixed asset files	Acquisition/disposal/sale/surplus records for personal property; lease/rent schedule and supporting documents for leased property; inventory and schedule of infrastructure and buildings for real property	Asset disposal/lease expiration/life of building + 7 years
I-Bond (Goods Movement) documents	Grant financial files and supporting documents	35 years
Refunds/unclaimed property	Refund and unclaimed property files	3 years
Tax documents	1099, W9 and other related documents; Board of Equalization sales tax reports	7 years (longer if related to grant and required by grantor)

Year-end financial statements and related reports	Annual audited financial statements and related reports, journal entries and supporting documents, certificate of participation records/bonds	Permanent

Human Resources

Employee accident and injury records	Accident files, employee injury (first aid) files	7 years
Employee benefit records	Tuition reimbursement, COBRA documentation, Section 125 documentation	7 years
Employee HR records	Disciplinary action log, employee workforce data, grievances & arbitrations, negotiations, complaint summary logs	Permanent
Employee recruitment records	Classification studies, class specifications, recruitment files, wage and salary data, acquisition records	7 years
Equal employment opportunity plan	Equal employment opportunity plan	Until replaced
Insurance benefits records	Insurance contracts, life insurance documentation, health insurance documentation	Life of policy + 3 years
Payroll records	Payroll registers, tickler files, timecards, vacation requests, family/medical leave requests	7 years
Payroll records	Payroll direct deposit records, CALPERS reports, Form 941 quarterly reports, payroll history YTD totals report, year end clearing/closing reports	Permanent
Personnel files	Personal and professional files of Executive Officer, deputies and staff. disciplinary support files, discrimination complaint files	Last day of employment + 7 years
Tax records	457 deferred comp documents, W2, W2 reports, transmittal of W2	7 years
Training records	Training program files, employee training completion records	Permanent

Incentives

Grant files	Program audit documents, program eligibility guideline documents; grant application, review and decision documents; grant program financial records; grantee monitoring documents; internal activity and tracking documents; project audit documents	End of project + 5 years
I-Bond grant records	I-Bond grant files	35 years
Reports to CARB/EPA	Grant reports to CARB/EPA	7 years
Vehicle Buy Back program	Vehicle Buy Back program - copies of vehicle eligibility documents provided to District for review	3 years

Information Systems

IT system backups	System backups	Until replaced

Legal

Legal records	Comments on legislative, administrative and hearing board matters	7 years
Legal records	Litigation-pleadings and orders, settlement agreements, opinions and advice files, rule interpretations/opinions, civil enforcement case records	Permanent

Permitting

Data update forms	Responses to facility data update questionnaires	Data entry + 3 years
EPA grants	EPA 105 grant documents	Final report + 3 years
Permit application records	Authority to Construct documents, Permit to Operate documents, banking documents, registration documents, application forms, permit exemptions	Life of facility or emission reduction credit + 7 years
Permit advisories	Advisories regarding permitting	7 years
Plant (facility) files	Permit documents, ownership/facility status records, emission-related documentation, regulatory plan submittals, source data forms	Life of facility + 7 years
Reports to CARB/EPA	Engineering reports to CARB/EPA	7 years
Toxics Hotspots records	Toxics emissions inventory reports, risk assessments	Life of facility + 7 years

Planning

Air quality plans	State and federal air quality plans and supporting documentation, including emission inventory and modeling records, environmental and socioeconomic review documents, and any associated plan-related reports to ARB or EPA	Permanent
CEQA records	CEQA comments as responsible agency or commenting agency	7 years
Emission inventory records	Final emission inventory reports and supporting material for greenhouse gases, criteria pollutants, and toxic air contaminants; emission inventory annual reports submitted to ARB CEIDARS database	Permanent

Public Relations and Outreach

Annual reports	Annual reports	Permanent
Community meeting records	Community outreach community meeting files and resource team records	7 years
Mailing lists	Mailing lists	Until replaced
News media records	News releases and clips	Permanent
Outreach documents	Brochures	Until replaced
Publications	Newsletters and other publications	7 years
Requests from public	Requests for general information, requests for publications, requests for speakers	3 years

Rulemaking

Rules and regulations	All versions of rules and regulations that were adopted or made available to the public; rule development files and any associated economic or environmental analyses	Permanent

Appendix K. BAAQMD Comments on Draft Report

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ALAMEDA COUNTY
John J. Bauters
(Chair)
Juan Gonzalez
David Haubert
Nate Miley

CONTRA COSTA COUNTY
Ken Carlson
John Gioia
David Hudson
Mark Ross

MARIN COUNTY
Katie Rice

NAPA COUNTY
Joelle Gallagher

SAN FRANCISCO COUNTY
Tyrone Jue
(SF Mayor's Appointee)
Myrna Melgar
Shamann Walton

SAN MATEO COUNTY
Noelia Corzo
Davina Hurt
(Vice Chair)
Ray Mueller

SANTA CLARA COUNTY
Margaret Abe-Koga
Otto Lee
Sergio Lopez
Vicki Veenker

SOLANO COUNTY
Erin Hannigan
Steve Young

SONOMA COUNTY
Brian Barnacle
Lynda Hopkins
(Secretary)

Dr. Philip M. Fine
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:

BY EMAIL

October 13, 2023

Sheila Tsai
Acting Manager, Air Permits Section, Air and Radiation Division
United States Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901

Re: Comments on Draft Title V Evaluation Report for the Bay Area Air Quality Management District

Dear Ms. Tsai:

I am writing in response to your letter dated August 28, 2023, in which you request comments on EPA's Draft Title V Evaluation for the Bay Area Air Quality Management District (Air District)

We are pleased to see that EPA believes that our Title V program excels in a number of areas including the internal draft permit review practice, detailed statements of basis, consistency between permit documents, the practice of streamlining title V permit requirements, the use of our website to publish comprehensive and timely documentation of title V permitting actions, and our effective field enforcement program. The Air District puts a great deal of effort into issuing and enforcing Title V permits -- these activities consume over 10 percent of our total resources devoted to stationary source regulatory programs.

We also appreciate EPA's input and suggestions on how our Title V program can be improved. Our detailed comments are enclosed. We look forward to receiving the final report when it is completed, and working with EPA to prepare a workplan that addresses the findings.

Sincerely,

Dr. Philip M. Fine
Executive Officer/APCO

Enclosure

BAAQMD Comments on Draft Title V Program Evaluation Findings

"2.1 Finding: The District's title V permits do not clearly incorporate all applicable requirements in an enforceable manner; requirements that are only listed in Table IV (Source-Specific Applicable Requirements) of the title V permit and not in permit conditions may not be enforceable as a practical matter.

.

Discussion: A primary objective of the title V program is to provide each major source with a single permit that describes how a source ensures compliance with all applicable CAA requirements. To accomplish this objective, permitting authorities must incorporate applicable requirements in sufficient detail such that the public, facility owners and operators, and regulating agencies can clearly understand which requirements apply to the source. These requirements include emissions limits, operating limits, work practice standards, and monitoring, recordkeeping, and reporting provisions that must be enforceable as a practical matter.

During our file review, we found that the BAAQMD's title V permits do not consistently incorporate all applicable requirements in a manner that is clear and enforceable. The BAAQMD's title V permits list applicable requirements in Section IV (Source-Specific Applicable Requirements) by tabulating applicable SIP-approved rules, federal regulations, and NSR permit conditions in Table IV with a short title or description of each requirement. However, some applicable requirements are not included in Section VI (Permit Conditions) of the title V permits, which can create confusion about what requirements the source must comply with. For example, during our file review we found that some permits identify 40 CFR part 63, subpart ZZZZ as an applicable requirement in Table IV. However, the maintenance requirements from that subpart (e.g., 40 CFR 63.6603(a)) are not expressly included in Section VI.

During our interviews, we also found that District staff were concerned about whether some facilities had followed their schedule of compliance, which is incorporated into Section V (Schedule of Compliance) of a BAAQMD title V permit but generally not into any source-specific applicable requirement in Section IV or any permit condition in Section VI of a title V permit.

Recommendation: The BAAQMD should continue identifying all applicable requirements in its title V permits; however, the District must incorporate these requirements and approved schedules of compliance in a clearly enforceable manner."

Comment:
The Air District believes its title V permits already incorporate all applicable requirements in an enforceable manner. Applicable requirements are enforceable as a

practical matter as long as they are described in sufficient detail in any section of the permit. The standard condition in Section I.B.2 of the permit states: "The permit holder shall comply with all conditions of this permit. The permit consists of this document and all appendices. Any non-compliance with the terms and conditions of this permit will constitute a violation of the law and will be grounds for enforcement action; permit termination, revocation and re-issuance, or modification; or denial of a permit renewal application. (Regulation 2-6-307; MOP Volume II, Part 3, §4.11)"

In this section, the word "condition" encompasses all of the provisions in the permit, including the applicable requirements listed in Section IV and any Schedule of Compliance in Section V. The permit conditions in Section VI of the permit are specific conditions that include case-by-case determinations for a particular facility or class of facilities. The only section in which provision is made for inadvertent conflicts between the sections is this paragraph at the beginning of Section VII: "This section is only a summary of the limits and monitoring requirements. In the case of a conflict with any requirement in Section I-VI, the preceding sections take precedence over Section VII." Repeating all of the requirements from Sections IV and V in Section VI is redundant, unnecessary, and would make the permits overly cumbersome. As noted in Finding 2.10 below, the title V permits for complex facilities such as refineries are already voluminous and contain some redundant text.

It would be possible to revise the language in Section I.B.2 to expressly include "requirement", however, this change is unnecessary for enforceability. Additionally, Section I.B.2 is a standard condition in the Manual of Procedures that has been adopted by the Air District Board of Directors and approved by EPA into the Air District's title V program, so this change would require rule-making, submittal to CARB for approval, and subsequent submittal to EPA for approval to make this change. However, to maximize clarity, the Air District will consider revising the language in Regulation 2-6-307 and the Manual of Procedures Volume II, Part 3, §4.1 the next time these provisions are open for revision. Meanwhile, the Air District asks EPA to understand that all conditions and requirements in Sections I, parts of II (equipment), III, IV, V, VI, and VII are enforceable provisions of the permit. Additionally, the tables clearly identify the applicable requirements that apply to each emissions unit at a title V facility (See Finding 2.10 below).

The Air District acknowledges that it has been inconsistent in citing the maintenance requirements of 40 CFR 63, Subpart ZZZZ. In some permits, it is fully described, in others not. The Air District commits to augment the Subpart ZZZZ requirements in all permits that contain it as they are renewed.

In addition, Air District staff will continue to work with EPA staff to review and incorporate these requirements and approved schedules of compliance in a clearly enforceable manner.

"2.2 Finding: Certain BAAQMD title V permits contain permit shield language that may unnecessarily limit the District's and EPA's authority to initiate an enforcement action for a source that violates an applicable requirement.

Discussion: The majority of permits we reviewed did not include a permit shield. Some permits included a permit shield that explains the shield regarding non-applicable requirements and the subsumed applicable requirements. Overall, those sections of the permit properly discussed the bases of the non-applicable requirements and what specific permit conditions would ensure compliance with the subsumed applicable requirements. However, similar to our 2009 Evaluation, we found some of the permit shield language could unnecessarily limit the District's and EPA's authority to initiate an enforcement action. For example, we found the following language in the non-applicable requirements section of a permit: *"...Enforcement actions and litigation may not be initiated against the source or group of sources covered by this shield based on the regulatory and/or statutory provisions cited, as long as the reasons listed below remain valid for the source or group of sources covered by this shield*", and in the subsumed requirement section: *"...Enforcement actions and litigation may not be initiated against the source or group of sources covered by this shield based on the subsumed monitoring requirements cited*". Such language regarding enforcement actions is not appropriate, because an enforcement action can still be taken if there are reasons not explicitly stated in the permit that the shield should be invalidated.

Recommendation: To ensure the permit shield will not unnecessarily limit the authority of the District, EPA, and the public to initiate enforcement actions, the District must remove the permit shield language regarding enforcement actions and litigation by amending the permit shield language in the District's Regulation 2, Rule 6. The District should consider including the language in 40 CFR 70.6(f)(3) in its permit shields."

Comment:
The italicized language shown from the Air District's title V permit is cited in the Air District's federally approved title V program which was originally adopted on February 1, 1995. It is cited in BAAQMD Regulation 2-6-233, and in the BAAQMD Manual of Procedures, Volume II, Part 3, Major Facility Review, Section 4.16.

The permit shield, as set out in 40 CFR 70.6(f), is intended to provide certainty to a source, that if a decision of non-applicability has been documented in the title V permit, enforcement action will not be taken against the source on the basis of that requirement until the decision is reviewed formally by the permitting authority, including public notice and EPA review.

The Air District understands that the permit shield would only be valid as long as the shield was in place. If the Air District or EPA discovered that the basis for the shield was invalid, the Air District or EPA could re-open the permit after due notice and delete the shield. The applicable requirement from which the facility had been shielded would then

apply. Enforcement actions and litigation could be initiated as of the date that the revised permit was re-issued. Further, the use of "may" rather than "shall" in the italicized language provides for enforcement discretion to make the enforcement action retroactive if the Air District or EPA determines that the shield was invalid based on any fraudulent representations in the permit application.

If the Air District determines that a permit shield was granted in error, the Air District will reopen the permit, delete the permit shield, and take appropriate enforcement action. The Air District recognizes that the permit shield regulations may not be clear to permit holders and the public. The Air District's Manual of Procedures requires the use of the current permit shield language. However, the Air District commits to explaining the permit shield regulations fully in Statements of Basis for initial permits and permit renewals where the permit contains permit shields, or any revision where a permit shield is granted or revised. Further, the Air District will consider revising BAAQMD Regulation 2-6-233 and Manual of Procedures, Volume II, Part 3, Major Facility Review, Section 4.16.to provide more clarity the next time these provisions are open for revision.

The Air District would appreciate further clarification on why EPA believes that the italicized language shown from the Air District's title V permit will unnecessarily limit the authority of the District, EPA, and the public to initiate enforcement actions, and will continue to work with EPA to find ways to improve the permit shield language in our title V program.

"2.3 Finding: The BAAQMD has an internal quality assurance process for reviewing draft versions of permits, which minimizes opportunities for errors before the documents are made available for review by the public and the EPA.

Recommendation: The EPA commends the BAAQMD for its comprehensive internal draft permit review practices. The EPA recommends that the District update its title V checklist to document the review by the Compliance and Enforcement and Legal Divisions."

Comment:
We appreciate the recommendation. The Air District will amend the current title V checklist and use the updated version to document the internal review by each division including the Engineering, Compliance and Enforcement, and Legal Divisions.

"2.4 Finding: The BAAQMD has improved its statements of basis over time, and generally produces detailed statements of basis in accordance with EPA guidance.

Discussion: … During interviews, staff reported that the Compliance and Enforcement Division used to develop a report on the Source's compliance

history for inclusion in the statement of basis; however, this practice discontinued due to competing workload priorities.

Recommendation: The EPA commends the BAAQMD for its efforts in producing detailed statements of basis that clearly state why the permitted source is subject to a standard. To improve, the EPA recommends the BAAQMD also include a summary of the source's compliance history in the statement of basis."

Comment:
The Air District agrees that compliance history can be helpful information in the statement of basis. For title V facilities that have compliance issues, Air District staff in Engineering and Compliance and Enforcement will coordinate to compile and include compliance history in the statement of basis when processing title V permit applications.

"2.6 Finding: The District's statements of basis do not consistently include an analysis of potential environmental justice issues, which could be used to inform outreach efforts.

Discussion: The EPA defines "Environmental Justice" to include the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and polices. The EPA's goal is to provide an opportunity for overburdened populations or communities to participate in the permitting process. "Overburdened" is used to describe the minority, low-income, tribal and indigenous populations or communities in the United States that potentially experience disproportionate environmental harms and risks due to greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities.

On December 15, 2021, in an attempt to better address air pollution in areas overburdened by environmental health stressors, the BAAQMD adopted amendments to Regulation 2, Rules 1 and 5. These changes are implemented through the District's NSR permit program for the construction of new sources and modification of existing sources of toxic air contaminants. These rule amendments included: defining overburdened communities; setting a more stringent cancer risk limit in overburdened communities by lowering it from 10 in one million to 6 in one million; and enhancing the public notifications for projects within overburdened communities. These rule amendments do not apply to the District's title V program. The District does not discuss environmental justice or overburdened communities in the title V permitting process. This issue is further discussed in Finding 4.1. During our interviews, many District employees suggested that EPA training on environmental justice would be appreciated.

Recommendation: The EPA commends the District for attempting to mitigate environmental impacts in overburdened communities. The EPA suggests that the District expand its environmental justice efforts to its title V program. Specifically, the District should consider working to enhance public involvement in the title V process for communities with environmental justice concerns. Further, the EPA is available to provide trainings to California Air Districts, when available and appropriate, on environmental justice."

Comment:
The recent changes in the Air District's NSR permit program apply to all facilities under our jurisdiction and many of the Air District's title V facilities are within overburdened communities. Projects in title V facilities are first reviewed and approved in Air District's NSR permit program and then incorporated into title V permits. Even though the Air District has no separate discussions about environmental justice or overburdened communities in the title V permitting process, a project that is being added into a title V permit has already gone through a review process that includes public notice requirements and lower health risk limit within overburdened communities. Engineering evaluations which have detailed analysis and discussions on these requirements are included in the statement of basis for the corresponding title V permit application.

Air District staff will work with EPA staff to identify opportunities to further enhance public involvement and address environmental justice concerns specifically in the title V process that cannot be addressed in Air District's NSR permit program. We also welcome training opportunities for Air District staff on environmental justice.

"2.7 Finding: While the BAAQMD generally references the underlying origin and authority for permit conditions, the references to the underlying origin often lack specificity.

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Discussion: Each title V permit is required to specify and reference the origin and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based. In most cases, the origin and authority for a permit condition can be referenced by citing a particular rule or regulation. The District consistently cites a basis for each permit condition; however, its practice of only citing to "BACT" meaning Best Available Control Technology, "RACT" meaning Reasonably Available Control Technology, or "Offsets" for NSR requirements is insufficient.

For NSR requirements, the *authority* for the permit condition stems from the SIP-approved NSR rule. But, because NSR rules likely do not specify the emissions limits and associated monitoring, recordkeeping, and reporting requirements to which the source is subject to under the NSR determination, the *origin* of the title V permit condition is the actual NSR permit issued to the source. Thus, requirements stemming from NSR rules, or the Prevention of Significant

Deterioration (PSD) program at 40 CFR 52.21, should generally cite the underlying rule or regulation as the authority and the specific NSR permit action—not just "BACT"—as the origin. Otherwise, it is unclear how the EPA and public can verify BACT determinations have been correctly incorporated into the title V permit.

Recommendation: To address this finding, the District should develop a plan to revise its title V permits to assure that each permit cites the appropriate NSR/PSD permits and District NSR rules as part of the origin and authority for a permit term or condition as required by 40 CFR 70.6(a)(1)(i)."

Comment:
The Air District decided to cite "BACT" meaning Best Available Control Technology, "RACT" meaning Reasonably Available Control Technology, or "Offsets" for NSR requirements for some practical reasons. First of all, citing with the conventional names of these requirements instead of the particular provisions in the NSR rules helps the regulated communities and public to understand the origin of the requirements even if they are not familiar with the Air District's rules and regulations. In addition, the Air District's NSR rules have been amended multiple times over the years. Besides the contents in some provisions, the numbering of the provisions within a rule can change during an amendment. On the other hand, these conventional names remain the same. Based on past experience in the Air District, citing with the conventional names has helped to reduce the burden to update the citations in permit conditions during a rule amendment for the large number of permits that the Air District issues and maintains.

NSR/PSD permits are not currently cited as the basis for any permit conditions because the statement of basis of each title V permit application includes all relevant engineering evaluations providing the detailed analysis to verify the NSR determinations. Whenever a permit condition is added to or modified in a title V permit, the engineering evaluation(s) related to the permit condition(s) is included as an attachment to the statement of basis. The engineering evaluations are part of the title V permit application documents.

In addition, the Air District permits a number of sources that have been modified and reviewed in many permit applications throughout the years, such as those in refineries and landfills. Having to cite back to the permit application where a specific analysis originated is burdensome.

District staff will work with EPA staff to find ways to assure compliance with 40 CFR 070.6 (a) (1) (i) while considering the above factors.

"2.9 Finding: Most title V permit conditions with District rule requirements are appropriately marked as not federally enforceable. Additionally, most conditions appropriately reference the current SIP rules most recently approved by EPA.

Recommendation: The EPA commends the BAAQMD for identifying which conditions are federally and locally enforceable in their title V permits. The

District should continue this labelling practice and ensure ATC and PTO requirements remain federal applicable requirements. In addition, during the permit preparation process, the District should ensure that they include all SIP-approved requirements, especially in instances where the EPA has approved a more recent version of the District-adopted rule. Region 9 maintains a database of federally enforceable SIP rules on its website, which permit engineers may find useful when verifying the latest SIP-approved versions of rules."

Comment:
The Air District has been utilizing various methods to ensure that SIP-approved regulations are included and are correctly dated and marked as federally enforceable. Engineering staff maintains a title V permit template that is updated on a regular basis to show the correct dates of adoption for SIP-approved and newly amended Air District regulations. The Air District permit staff also utilize the same EPA web page as indicated in the draft report, which lists the current BAAQMD SIP-approved regulations, as a reference while processing title V permits. The Air District is currently recruiting for the title V Permit Program Engineer position, who will provide support to title V permit engineers and perform quality control to ensure consistency and accuracy, including checking the SIP-approved regulations. The Air District will continue to identify additional measures to reduce these errors in our title V permits.

"2.10 Finding: While District staff and management are generally satisfied with the District's title V permit format, the District has made no decisions on template changes that were under discussion during our 2009 Evaluation.

Discussion: In our 2009 Evaluation, we reported that the District was considering ways to improve the readability of the permits, which could include merging permit Sections IV and VII (Source-Specific Applicable Requirements and Applicable Limits & Compliance Monitoring Requirements). During interviews for this evaluation, we heard that the District was still considering this change. For most of the District's title V permits, the applicable requirements and monitoring requirements are listed in tabular format, with one table per emissions unit or group of emissions units. During interviews, staff indicated that the tables make it easy to identify the applicable requirements that apply to each emissions unit at a title V facility. Some staff and management are generally satisfied with this format and believe that it promotes consistency, accuracy, and comprehensiveness. However, some staff and management have acknowledged that a disadvantage of this practice is that with complex sources such as refineries, it results in voluminous permits with redundant text. Each applicable requirement, e.g., an applicable NSPS or NESHAP provision, is listed in a row in Table IV (Source-Specific Applicable Requirements). The applicable requirements are typically listed multiple times in Table IV because they apply to more than one emissions unit or group of emissions units. Some of the same applicable requirements are then repeated several more times in Table VII (Applicable Limits & Compliance Monitoring Requirements). The District combined the

tables in approximately four permits but reported that it would significantly increase the permit processing time to combine the tables in permits for sources with more emissions units during the next permit revision.

Recommendation: The EPA recommends prioritizing discussions on the improvement of permits and implementing decisions in a timely manner."

Comment:

The Air District's permitting staff has combined Sections IV and VII into one section for some title V permits but received mixed feedback regarding the effectiveness of this approach. In addition, implementing this change increases the processing time of a title V permit application. Considering that the current top priority is to address the existing permitting action backlog, the Air District does not require permitting staff to combine Sections IV and VII as this could delay the processing time of a title V permit application.

"3.1 Finding: The BAAQMD usually includes a detailed CAM analysis in their statements of basis that clearly documents the BAAQMD's determination and explains the applicable monitoring requirements.

Discussion: Further, the District's current statement of basis template indicates that CAM should be discussed if it applies, as opposed to all the time. We found examples where CAM did not appear to be re-evaluated in permit renewal actions. CAM applicability can evolve over time as a source makes changes, and thus its applicability should be verified in each iteration of a title V permit, including in modification or renewal actions where the District determined CAM did not apply in the initial title V action.

Recommendation: We commend the BAAQMD for including detailed CAM analyses in statements of basis. The BAAQMD should continue to review and discuss CAM applicability as it processes initial permits, permit renewals, and significant modifications. Additionally, CAM training should be made available for permitting staff."

Comment:

The Air District currently provides CAM training on a one-on-one basis to permit engineers during the processing of title V renewal permit applications. We find this to be an effective way to ensure consistent application and review of CAM. The District will continue to verify CAM applicability for permit all title V permit actions (initial, renewals, and significant modifications). Additional group training is always valuable, and the Air District will include other CAM training classes offered by CARB and EPA.

"3.2 Finding: The BAAQMD's title V permit conditions generally contain monitoring that is sufficient to determine compliance with emissions limits, as

required by the Part 70 regulations, except for volatile organic compound (VOC)-emitting equipment and certain aspects of the enforceability of monitoring requirements.

Discussion: Part 70 and the BAAQMD's EPA-approved title V rules have provisions that require that permits contain monitoring that is sufficient to demonstrate compliance with all applicable requirements. During our file review, we found that the BAAQMD's title V permits generally contain sufficient monitoring requirements to assure compliance with applicable requirements and permit conditions. Many of the applicable requirements incorporated into the District's title V permits already contain sufficient monitoring (such as NSR permit conditions, SIP- approved rules, NSPS/NESHAP proposed by the EPA after November 15, 1990, and CEMS required for large combustion sources). Source testing, parametric monitoring of control device operation, and associated recordkeeping are used to assure compliance with emissions limits.

An exception where the BAAQMD's title V permits do not contain appropriate monitoring provisions is related to monitoring requirements for VOC-emitting equipment. In our 2009 Evaluation, we believed that the Reasonably Available Control Technology (RACT) regulations, developed by the BAAQMD and approved into the SIP as Regulation 8 (Organic Compounds), were sufficient to meet the title V requirements. However, during our file review in this program evaluation, we found that while most of the BAAQMD's title V permits contain sufficient monitoring requirements, some lack appropriate monitoring requirements for certain VOC-emitting equipment. Additionally, during interviews, it was suggested that fugitive emissions of VOC were not sufficiently monitored.

Another exception is related to the enforceability of monitoring requirements, specifically Section VII and Table VII of the BAAQMD's title V permits. While Section VII of the BAAQMD's title V permits summarizes applicable emissions limits and compliance monitoring requirements from local rules, SIP-approved rules, NSR permit conditions, and NSPS/NESHAP provisions, it can be superseded by Sections I through VI of the permits in the case of conflict with any requirement in preceding sections. If a prior section contains requirements that differ from the requirements identified in Section VII, the enforceability of the requirements in Section VII may be compromised.

Recommendation: We commend the BAAQMD for generally including sufficient monitoring requirements in title V permits. The BAAQMD should continue to ensure that all title V permits have monitoring sufficient to determine compliance, including ensuring VOC emissions are appropriately and periodically monitored. Additionally, the EPA recommends the District incorporate all applicable monitoring requirements into permit conditions in Section VI of the title V permit to ensure practical enforceability."

Comment:
It has always been the Air District's intent to include sufficient and appropriate monitoring requirements for VOC-emitting equipment in title V permits to ensure compliance with the Air District's Regulation 8 (Organic Compounds) and other state and federal requirements. Rule 18 of Regulation 8 specifically targets fugitive emissions of VOC from equipment leaks at refineries, chemical plants, bulk plants, and bulk terminals. Applicable monitoring requirements from this rule are listed in Section VII of the BAAQMD title V permits for these facilities.

If unintentional omission or insufficiency is identified for certain VOC-emitting equipment, the Air District will work with EPA to modify individual permits to ensure appropriate monitoring requirements are included in these title V permits.

As we stated in the comment for Finding 2.1, the Air District considers all sections of the permit to be enforceable, and all applicable monitoring requirements are listed in Section IV (Source-Specific Applicable Requirements) of a BAAQMD title V permit. Furthermore, including all applicable monitoring requirements as permit conditions will require an additional administrative task to update these conditions whenever the requirements are amended, which may cause unnecessary delay for issuing title V permits.

"3.3 Finding: Emissions limitations used to avoid requirements like major NSR or title V are generally enforceable as a practical matter; however, the District does not have a policy for setting synthetic minor limits.

Discussion: A source may accept a voluntary limit (also known as a "synthetic minor" limit when the source is not a true minor source) to maintain its potential to emit (PTE) below an applicable major source threshold and thereby avoid major NSR permit requirements and/or the need for a title V permit. Sources establish such a limit by obtaining a synthetic minor permit containing practically enforceable emissions limitations from the permitting authority.

According to the EPA's guidance, synthetic minor limits must be enforceable as a practical matter, meaning they are both legally and practicably enforceable. Additionally, for emissions limits in a permit to be practicably enforceable, the permit provisions must specify: 1) technically-accurate limitations and the portions of the source subject to such limitations; 2) the time period for the limitations (emissions limit averaging period); and 3) the method to determine compliance, including appropriate and practically enforceable monitoring, recordkeeping, and reporting requirements.

In response to a petition regarding the Hu Honua Bioenergy Facility in Hawaii, the EPA stated that synthetic minor permits must specify: 1) that all actual emissions at the source are considered in determining compliance with its synthetic minor limits, including emissions during startup, shutdown, malfunction

or upset; 2) that emissions during startup and shutdown (as well as emissions during other non-startup/shutdown operating conditions) must be included in the semi-annual reports or in determining compliance with the emissions limits; and 3) how the source's emissions shall be determined or measured for assessing compliance with the emissions limits.

The District does not have a policy for setting synthetic minor limits, but local Regulation 2, Rule 6 allows sources seeking to avoid major source status to do so through voluntarily limiting a source's PTE. During our file review, we found that the emission limitations in the District's permits are generally enforceable as a practical matter. However, as detailed in Finding 5.3 below, our interviews indicate that the District is not consistently tracking the facility-wide PTE during each minor source modification action, which could undermine the District's major and minor source permitting (including synthetic minor permitting) programs. See Finding 5.3 for additional information.

Recommendation: We commend the BAAQMD in setting practically enforceable emission limits in most cases. For those facilities with a PTE above the major source threshold that wish to avoid title V permitting, we recommend the District develop internal guidance for permitting synthetic minor sources consistent with EPA policy, and that permitting staff take the EPA's online training for *Setting Enforceable Potential to Emit Limits in NSR Permits*."

Comment:
The Air District has developed and been using standard permit conditions for synthetic minor operating permits, which specify annual facility-wide emission limits to be 95 tons for any regulated air pollutant, 9 tons for the individual HAP, and 24 tons for all HAPs combined. Based on each facility's unique operation, permit engineers also specify emission limits and the corresponding emission estimate methods for each source category, and the appropriate monitoring requirements as permit conditions. As guidance for permitting different types of sources and setting permit limits, Air District permitting staff have been utilizing the Air District's Permit Handbook, Complex Permitting Handbook for BAAQMD New Source Review Permitting, and Engineering Policy and Procedure Manual. Additional training for applying these existing standard permit conditions and resources can improve the consistency of setting synthetic minor limits.

During the Air District's NSR permitting process, the facility-wide PTE including the new and modified sources being evaluated is determined. The facility-wide potential to emit for each criteria pollutant is used for determining the applicability of the offset requirements. The toxic air pollutant emissions, which include most HAPs, at the facility for the past five years are also calculated to verify compliance with the Air District Regulation 2, Rule 5.

We are also implementing changes to improve tracking of the facility-wide PTE. By October 2023, the Air District will fully transition to a new database to process permit

applications and track permitted emissions. This new database will provide tools to track a facility's potential to emit in addition to actual emissions.

We appreciate that EPA identified the available training resource to the Air District. We will include this online training in our permitting staff training curriculum.

"4.1 Finding: The District is generally transitioning toward a more proactive community engagement approach but has not incorporated this approach into its title V program.

Recommendation: We commend the BAAQMD's transition to a more proactive approach for community engagement and efforts to provide and improve translation services for linguistically isolated communities within its jurisdiction as part of its NSR program. The EPA encourages the District to also apply this approach in its title V permit program. The BAAQMD should incorporate translation efforts into its title V program by using mapping tools as appropriate to assure updated demographic information. The EPA recommends that Engineering Division management and staff increase communication, coordination, and collaboration with the District's community engagement efforts."

Comment:
The Air District appreciates EPA's recommendations to improve our title V permit program. Engineering staff have initiated and will continue discussions with Community Engagement staff to identify ways to improve community outreach of our title V permit program. Suggestions include extending the public notice period based on community need and feedback, compiling an email distribution list to include community groups from previous community engagement experience of an area, utilizing additional channels, such as social media and websites, for outreach.

The Air District will also review existing translation programs to determine the feasibility of incorporating translation effort in our title V permit program.

"4.3 Finding: The District provides appropriate notification regarding the public's right to petition the EPA Administrator to object to a title V permit but could improve the information provided to the public by including links to the EPA's title V permit dashboard in all public notices.

Recommendation: The EPA commends the BAAQMD for informing the public of the right to petition the EPA Administrator to object to the issuance of a title V permit. We recommend including links to the EPA's title V permit dashboard in all public notices so the public can conveniently navigate to the relevant 45-day review period dates."

Comment:
The Air District appreciates the recommendation and agrees that it can help the public navigate to the relevant dates. We will start to include links to the EPA's title V permit dashboard in our public notice template.

"4.4 Finding: The District's practices around concurrent public and EPA review of title V permits are implemented consistent with current EPA regulations and guidance. However, the District has not adopted the recently amended language from 40 CFR 70.8(a)(1) into its title V program rules.

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Recommendation: We commend the BAAQMD for implementing a concurrent review process that is consistent with the requirements of the title V program and EPA guidance. We recommend that the District adopt the February 5, 2020 amendments to 40 CFR 70.8(a)(1) into the District's title V program rules."

Comment:
The Air District's Manual of Procedures, Volume 2, Part 3 (Major Facility Review Permit Requirements) contains EPA review requirements similar to the February 5, 2020 amendments to 40 CFR 70.8(a)(1). Specifically, Section 6.1.2 states: "The District shall send the proposed permit to EPA for review at the same time that the public notice is published or after the public comment period, at the APCO's discretion. If the proposed permit has been submitted to EPA, and substantial changes are made due to public comments, the APCO shall withdraw the permit from EPA review, and resubmit a revised proposed permit to EPA, restarting the 45-day review period." For consistency, the Air District will consider adopting the February 5, 2020 amendments to 40 CFR 70.8(a)(1) into BAAQMD Regulation 2, Rule 6 the next time this rule is open for revisions.

"4.6 Finding: We did not find evidence that the BAAQMD notified nearby tribes of title V permitting actions.

Recommendation: The Robinson Rancheria in Lake County, California must be included in public notifications as an "affected state" when a title V applicant is within 50 miles of the tribal lands. More generally, we also encourage the District to notify tribal governments when taking significant actions that may affect their air quality."

Comment:
The Air District commits to contacting the tribal council office of Robinson Racheria in Lake County, California to find out the address to send notice of draft title V permits for any source within 50 miles of the Robinson Rancheria.

"5.1 Finding: The District does not process title V actions in a timely manner, impeding the public's right to enforce all applicable requirements.

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Recommendation: The District should conduct a review of its permit issuance process and then develop a plan of action for issuing title V permit actions in a timely manner. The EPA will work with the District on this finding and monitor whether the District is able to adequately administer the title V program."

Comment:
The Air District is committed to working with the EPA to improve the process. As recommended, Air District management and staff will conduct a review and then develop a plan of action for issuing title V permit actions in a timely manner.

"5.2 Finding: Though not always timely, the BAAQMD generally processes title V permit actions in accordance with the District's EPA-approved title V program and the federal part 70 regulations.

Discussion: … In 2020, the EPA revised the Part 70 program at 40 CFR 70.7 and 70.8 to make clear that the statement of basis must be made available to the public and the EPA. The District's title V rules were last amended in 2017, so they do not include these updated requirements.

Recommendation: The EPA commends the District for submitting its proposed and final permit actions to the EPA for review. As mentioned elsewhere in this report, we encourage the District to update its title V rules so that they are consistent with the EPA's 2020 amendments to 40 CFR 70.7 and 70.8."

Comment:
The Air District's current title V permit process already makes the statement of basis available to the public and the EPA by posting it on the Air District website along with the proposed title V permit and providing the link in public notices. The Air District agrees that incorporating the EPA's 2020 amendments to 40 CFR 70.7 and 70.8 in our title V rules will further ensure consistency. The Air District will consider incorporating EPA's 2020 amendments to 40 CFR 70.7 and 70.8 into BAAQMD Regulation 2, Rule 6 the next time these provisions are open for revision.

"5.3 Finding: The District does not consistently evaluate the potential emissions from sources without title V permits to determine if they are major sources, which could result in sources improperly avoiding title V, major NSR, and other requirements.

Discussion: As discussed in Finding 3.3, a source may accept a voluntary limit (also known as a "synthetic minor" limit, because the source is not a true minor source) to maintain its PTE below an applicable major source threshold and

thereby avoid major NSR permit requirements and/or the need for a title V permit. Sources establish such a limit by obtaining a synthetic minor permit containing practically enforceable emissions limitations from the permitting authority.

However, based on several interview responses, the District does not consistently track the facility-wide PTE of the sources it regulates. Instead, the District tracks annual emissions based on actual throughput values. While using actual emissions was acceptable for avoiding title V permitting as part of the EPA's 1995 transition policy, that policy expired in 2000.

Determining whether a stationary source is a major source and subject to the title V program is based on potential, not actual, emissions. We found during the evaluation that District permitting staff are generally familiar with calculating the PTE for title V sources, but they do not consistently calculate the PTE for minor sources. Instead, they generally rely on the actual annual emissions of each facility, which are calculated using reported throughputs from operating data. Therefore, the District calculates the actual emissions for the source rather than the maximum potential emissions. Because major source status is based on facility-wide *potential* emissions, it is untenable for the District to use their record of actual emissions to accurately determine when an existing minor source's potential emissions require it to obtain a title V or synthetic minor permit. Beyond title V applicability, this issue can also have implications in determining NSR program requirements and requirements for major sources of hazardous air pollutants (HAP). This also creates potential enforcement issues for the BAAQMD and the EPA, as sources may be avoiding title V and major NSR requirements despite having the potential to emit above major source thresholds.

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Recommendation: The BAAQMD must develop a plan for ensuring the District can determine title V applicability according to the definition for "major source" under 40 CFR 70.2 by evaluating the facility-wide PTE when processing a permit application."

Comment:
As stated in the comment for Finding 3.3, the applicability of offset requirements in the Air District's NSR program is also based on facility-wide potential to emit. When processing NSR applications for new and modified sources, Air District's permitting staff includes an analysis for the offset requirements in which staff explains whether any offset requirements are triggered. This analysis requires a determination of the facility's potential to emit, which serves to verify major source applicability.

We are also implementing changes to improve tracking of the facility-wide PTE. By October 2023, the Air District will fully transition to a new database to process permit applications and track permitted emissions. This new database will provide tools to track a facility's potential to emit in addition to actual emissions.

On the other hand, this Finding serves as a reminder to the Air District that additional permitting training, especially for new staff, is needed to ensure consistency in our NSR permit review process during this high staff turnover period.

"5.4 Finding: The District provides the EPA and the public with an opportunity to review and comment on proposed initial synthetic minor permits but does not do so for proposed revisions to synthetic minor operating permits as required by the District's rules.

Discussion: During our 2009 Evaluation, we found that the District did not provide the EPA and the public an opportunity to review and comment on proposed synthetic minor operating permits. The EPA's Part 70 regulations do not provide specific requirements for synthetic minor permits. The EPA provides guidance for permitting authorities to develop such requirements for synthetic minor permits as part of their permitting programs in the agency's Memorandum entitled "Guidance an (*sic*) Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits" (January 25, 1995). Section 2-6-423 of the District's Regulation 2, Rule 6 requires that the District provide to the EPA "a copy of each proposed and final synthetic minor operating permit." In practice, the District has provided opportunity for review and comment only for initial synthetic minor permits. The District has submitted these permits to the EPA and has made these permits available for public review and comment. Though the District's rule requires submission of "each" proposed and final synthetic minor permit to the EPA, the District has not provided the EPA and the public an opportunity to review and comment on subsequent revisions to synthetic minor permits.

Recommendation: The EPA commends the District for providing the EPA and the public with an opportunity to review and comment on proposed initial synthetic minor permits. However, per section 2-6-423 of the District's Regulation 2, Rule 6, the District must provide the EPA a copy of each proposed and final synthetic minor operating permit, which the EPA interprets as all synthetic minor permit actions (including subsequent revisions). We recommend that the District also provide for public review of revisions to synthetic minor permits."

Comment:
Since the submittal of the title V Workplan on December 21, 2009, the Air District has been publishing public notices and providing a 30-day EPA review period for initial synthetic minor permits. EPA had no additional comment in regard to this proposed corrective action in the 2009 Title V Workplan. It is the Air District's understanding that our program satisfies the requirements in BAAQMD Rule 2-6-423 as currently implemented. Section 2-6-423 states, "The APCO shall take action on applications for synthetic minor operating permits and for synthetic minor operating permit revisions as follows:" The section includes several sub-sections, some of which expressly apply to

revisions while others do not. Section 2-6-423.4 that EPA cites does not expressly apply to "revisions." By contrast, Sub-sections 2-6-423.5 and 2-6-423.6 expressly apply to revisions. Therefore, the Air District interprets that 2-6-423.4 applies only to new synthetic minor permits.

In general, the Air District prefers a simpler process for revisions to synthetic minor permits for a number of reasons:

1. The facilities that apply for synthetic minor permits are qualitatively different from the title V facilities. They are smaller and their emissions are less significant. Their permitting staff is generally smaller and less sophisticated. As such, the Air District and the facilities expect a qualitative difference in the process to revise a synthetic minor permit. If this process includes the same formalities as the process to revise a title V permit, a facility could opt to have a title V permit instead and the Bay Area would lose the opportunity to get voluntary emission reductions from the facility.
2. The Air District has expanded the use of synthetic minor limits to avoid applicability of other requirements. (See BAAQMD Regulation 2, Rule 6, Sections 101, 420, and 422.) If a synthetic minor limit applies to only a small part of a facility or permit, public participation and EPA review of a revision of such a permit are inappropriate and would discourage the use of this type of synthetic minor limit, again depriving the Bay Area of some potential emission reductions.
3. Public participation and EPA review are expensive and resource-intensive, which is not appropriate for revisions to synthetic minor permits at these smaller facilities. The facility is expected to pay for publishing the public notice. District staff must handle the publication of the notice and respond to any comments. The Air District may incur the expense of a public hearing. While the Air District does charge some fees for the application process (but not any hearing expenses), EPA has not mandated fees for synthetic minor activities.
4. Public participation and EPA review introduces title V-like delays into the permitting process for smaller facilities. A 30-day public participation and EPA review process are actually equivalent to a 2-3 month delay. It takes about 10 days to publish a notice in most newspapers "of general circulation." After the public participation and EPA review process, the Air District must respond formally to any comments by the public or EPA.
5. Revisions to synthetic minor permits are generally about the details of the permit or adding or subtracting emission units. The strategy by which the facility maintains its emissions under the title V thresholds is rarely changed. Introducing public participation and EPA review into the revisions would add unnecessary delays and costs to the synthetic minor permit revisions.

"6.2 Finding: The District's Compliance and Enforcement Division is involved in title V permit review for initial and renewal actions prior to public notice, which may improve the enforceability of the District's permits.

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Recommendation: The EPA commends the Compliance and Enforcement Division for reviewing draft permits. The Engineering Division could further strengthen the collaboration with the Compliance and Enforcement Division staff by updating the title V review checklist to standardize the inclusion of the Compliance and Enforcement Division, specifically an inspector assigned to the applicable source."

Comment:
Please see comment for Finding 2.3 above.

"7.1 Finding: Finding: Engineering and Compliance and Enforcement Division staff generally report that they receive effective legal support from the District Counsel's office but would like more information on the resolution of enforcement cases.

Recommendation: The EPA commends the BAAQMD on hiring a new District Counsel with extensive experience in air quality programs. The BAAQMD should continue to ensure that it receives effective legal support for the Part 70 program. The BAAQMD should improve communication and coordination with respect to enforcement outcomes among those involved in the resolution of noncompliance situations to ensure a common understanding of how enforcement efforts are resolved."

Comment:
The Air District appreciates the recommendation and is continuing to implement pathways for collaboration amongst its staff. The Air District will continue to ensure that the District Counsel's office provides effective legal support to the Compliance and Enforcement and Engineering Divisions.

"7.2 Finding: Finding: While the District tracks title V program expenses and revenue and those funds are spent solely to support the title V program, it is unclear whether these fees are sufficient to fully administer a successful program given the large permitting backlog and resource issues.

. **Recommendation:** During the evaluation, the EPA provided the BAAQMD with the most recent EPA guidance on title V funding (see Appendix I). The BAAQMD should review the guidance to ensure their fee program is consistent with the EPA's title V fee policy and that fees will be sufficient going forward. The District should also continue its efforts to provide appropriate resources to administer the title V program more effectively, especially in addressing the existing permitting action backlog."

Comment:

The Air District uses employee timesheets with accounting billing codes that specify title V-related work to track the amount of time that permit engineers and other staff spend on title V program activities. The Engineering Division also tracks the expenditures through Program 506, our title V program. Other divisions use Bill Code 80 and their specific programs such as activity in Compliance and Enforcement and Source Test. Title V revenues are tracked separately from all other revenues collected the Air District. We have a dedicated ledger account for that purpose (Account Number 41305).

The Air District uses a cost recovery methodology as described in the attached 2023 Cost Recovery Report (https://www.baaqmd.gov/~/media/dotgov/files/rules/reg-3-fees/2023-amendment/documents/20230419_03_crr_updtd_reg0300-pdf.pdf?la=en&rev=1e71abd9feb54f598f6133232e438769) to impose a schedule of fees to generate revenue to recover the costs of activities related to implementing and enforcing air quality programs. On a regular basis, the Air District has considered whether these fees result in the collection of a sufficient and appropriate amount of revenue in comparison to the cost of related program activities. As shown in Figure 5 of the report, the title V program cost recovery is 104.82%, which means we have recovered our costs for the program over the past 3 years. The cost recovery percentage does not consider work backlog, the staff time needed for the Air District to meet its regulatory obligations and the potential reduced level of service.

The Air District is currently undergoing a Management Audit and is embarking on a district-wide Strategic Planning process to establish agency priorities and securing the necessary resources to meet the goals we set for ourselves over the next five years, including addressing the title V permitting backlog.

"7.3 **Finding:** Communication between the Engineering Division and Compliance and Enforcement Division is inconsistent, which may impede the resolution of complex compliance issues at facilities.

. **Recommendation:** The EPA commends the BAAQMD's effort to maintain good communication between Engineering Division and Compliance and Enforcement Division management. However, the BAAQMD should promote increased communication and cooperation between Engineering Division and Compliance and Enforcement Division staff through systemic norms and processes, and explore ways to resolve permitting and enforcement issues among BAAQMD's Engineering Division and Compliance and Enforcement Division staff."

Comment:
The Air District staff in Compliance and Enforcement and Engineering Divisions are working together to enhance the Enforcement referral process and improve information-sharing across divisions. The referral process will utilize a digital program, AirTables, to track and send information to the assigned Inspector and Engineer for resolving compliance concerns. This tracking system will improve communications and

coordination whenever questions and concerns arise that pertain to permitting and enforcement matters.

"7.4 **Finding:** While the BAAQMD uses the EPA, the California Air Resources Board (CARB), and in-house courses to train permit staff, BAAQMD staff may benefit from additional training.

. **Recommendation:** The EPA commends the BAAQMD for distributing the title V workload to support succession planning. The District should identify additional core training needs and develop a curriculum that title V program staff in both the Engineering and Compliance and Enforcement Divisions should complete to enhance title V program understanding and improve permit writing and compliance determinations. This may include sharing Region 9's regulatory updates with staff and setting aside time for staff to network with staff from other agencies."

Comment:
The Air District's Compliance and Enforcement Division has a robust onboard training program that includes training on title V inspections, investigations and required reporting. Staff in the Compliance and Enforcement and Engineering Divisions will work together to build upon the training program by including permitting staff in the training program to ensure consistent application and implementation of the title V program.

"7.6 **Finding:** The District's Engineering Division faces staffing challenges, resulting in several issues including a permitting backlog of over 150 overdue open applications.

. **Recommendation:** Based on discussions with the District, a next step to address staffing challenges should include a review of the present permitting program workload and an analysis of any upcoming workload change associated with addressing the title V permitting backlog, discussed in Section 5 of this report, to ensure that the permitting program can operate effectively and efficiently with adequate staffing."

Comment:
In response to the Engineering Division's staffing challenges, the Air District has been actively recruiting permitting staff. In the past two years, four new staff positions in the Engineering Division were approved. We are currently in various stages of the recruitment process for nine vacancies in Engineering. Only seven of these positions will work on the title V program.

The Air District is also updating technologies to improve the efficiency of permit application and renewal processes. Starting October 2023, permitting staff will use a new system to process permit applications and renew existing permits, which provides new

and improved tools to reduce staff time on administrative tasks and enhance permit data quality.

The Air District will need to conduct a review of the permit issuance process, develop a plan for issuing title V permits in a timely manner, and determine what staffing level is needed to address the title V backlog. As stated in the comment to Finding 5.1, The Air District is committed to working with EPA to improve the process.

The Air District is currently undergoing a Management Audit and is embarking on a district-wide Strategic Planning process to establish agency priorities and securing the necessary resources to meet the goals we set for ourselves over the next five years, including addressing the title V permitting backlog.

"8.1 Finding: The District's permit record typically includes sufficient information used to inform permitting decisions.

Discussion: …We found during our evaluation that the District generally provides comprehensive information on its webpage to inform permit decisions, including all the District generated documents for the associated permit action; however, permit applications submitted by the applicants are not posted online. While in most cases, the District was able to provide a copy of the application when requested by the EPA, the District did have some trouble locating some of the applications if they were paper records.

. **Recommendation:** The EPA commends the BAAQMD on its conversion to electronic files. We recommend the BAAQMD follow their file retention policy and make permit applications readily available to the public when informing its permit decisions."

Comment:
The Air District has been making permit applications available to the public through our public record request. Any individual or organization can submit a public record request on the Air District's website.

"8.2 Finding: The District has a written file retention policy. However, most staff interviewed were not aware of the District's record retention schedules.

. **Recommendation:** The EPA commends the BAAQMD for having a written file retention policy that complies with the federal regulation. We recommend that the District provide training to staff on its records management policies."

Comment:
The Air District will review and determine the best way to provide training on the file retention policy for all engineering staff.

“8.3 Finding: The BAAQMD tracks title V permit data in a remotely hosted legacy system that is being phased out, negatively affecting permit data retrievability and representing a risk to retention of permitting data.

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. **Recommendation:** The EPA commends the BAAQMD for using an improved Compliance and Enforcement tracking database. However, the BAAQMD should explore modern database options and develop a long-term plan to effectively manage and track its title V permitting data to ensure data is not lost.”

Comment:
The Air District has identified and been implementing a modern database to replace the legacy systems. By October 2023, the Air District will fully transition to a new database which provides new and improved tools to process permit applications and track permitted emissions. The new system will provide opportunities to further improve title V permitting.

Appendix L. EPA's Response to Comments

EPA Region 9 Responses to the BAAQMD Comments on the Draft Title V Program Evaluation Report December 15, 2023

Responses to Comments

Thank you for providing comments on the draft title V program evaluation report.[1] Below, we've summarized each comment from the BAAQMD's October 13, 2023 letter and provide our response. Note: use of the words "we" or "our" in the **EPA Response** sections refer to the EPA.

1. Finding 2.1

BAAQMD Comment: The Air District believes its title V permits already incorporate all applicable requirements in an enforceable manner. Applicable requirements are enforceable as a practical matter as long as they are described in sufficient detail in any section of the permit. The standard condition in Section I.B.2 of the permit states: "The permit holder shall comply with all conditions of this permit. The permit consists of this document and all appendices. Any non-compliance with the terms and conditions of this permit will constitute a violation of the law and will be grounds for enforcement action; permit termination, revocation and re-issuance, or modification; or denial of a permit renewal application. (Regulation 2-6-307; MOP Volume II, Part 3, §4.11)"

In this section, the word "condition" encompasses all of the provisions in the permit, including the applicable requirements listed in Section IV and any Schedule of Compliance in Section V. The permit conditions in Section VI of the permit are specific conditions that include case-by-case determinations for a particular facility or class of facilities. The only section in which provision is made for inadvertent conflicts between the sections is this paragraph at the beginning of Section VII: "This section is only a summary of the limits and monitoring requirements. In the case of a conflict with any requirement in Section I-VI, the preceding sections take precedence over Section VII." Repeating all of the requirements from Sections IV and V in Section VI is redundant, unnecessary, and would make the permits overly cumbersome. As noted in Finding 2.10 below, the title V permits for complex facilities such as refineries are already voluminous and contain some redundant text.

It would be possible to revise the language in Section I.B.2 to expressly include "requirement", however, this change is unnecessary for enforceability. Additionally, Section I.B.2 is a standard condition in the Manual of Procedures that has been adopted by the Air District Board of Directors and approved by EPA into the Air District's title V program, so this change would require rule-making, submittal to CARB for approval, and subsequent submittal to EPA for approval to make this change. However, to maximize clarity, the Air District will consider revising the language in Regulation 2-6-307 and the Manual of Procedures Volume II, Part 3, §4.1 the next time these provisions are open for revision. Meanwhile, the Air District asks EPA to understand that all conditions and requirements in Sections I, parts of II (equipment), III, IV, V, VI, and VII are

[1] The BAAQMD's comments, are included as Appendix K in the final report.

enforceable provisions of the permit. Additionally, the tables clearly identify the applicable requirements that apply to each emissions unit at a title V facility (See Finding 2.10 below).

The Air District acknowledges that it has been inconsistent in citing the maintenance requirements of 40 CFR 63, Subpart ZZZZ. In some permits, it is fully described, in others not. The Air District commits to augment the Subpart ZZZZ requirements in all permits that contain it as they are renewed.

In addition, Air District staff will continue to work with EPA staff to review and incorporate these requirements and approved schedules of compliance in a clearly enforceable manner.

EPA Response: The EPA appreciates the BAAQMD's commitment to ensure Subpart ZZZZ requirements are fully described in renewed permits. We maintain that the format of the District's title V permits may create confusion about what requirements the source must comply with. Table IV lists applicable SIP-approved rules, federal regulations, and NSR permit conditions with a short title or description of each requirement. The EPA generally does not believe this level of detail is sufficient for the source to demonstrate compliance with the permit requirements (see EPA's White Paper Number 2). It is unclear whether the source can rely on Section VII for additional details since most District permits indicate that Section VII is only a summary and can be superseded by previous sections.

As discussed in EPA's White Paper Number 2, the EPA generally recommends including all permit requirements in enforceable permit conditions. We would be happy to work with the BAAQMD on approaches that will allow the District to assure appropriate incorporation of federally applicable requirements into title V permits, while minimizing the burden on the District throughout the development and implementation of the District's workplan.

The finding has been updated to state that the District generally incorporates all applicable requirements. However, the requirements in Table IV that are not included in permit conditions may not be enforceable as a practical matter. Additionally, we added a reference to EPA's White Paper Number 2 to the discussion as guidance for including a sufficient level of detail when using citations, cross references, and incorporations by reference.

2. Finding 2.2

BAAQMD Comment: The italicized language shown from the Air District's title V permit is cited in the Air District's federally approved title V program which was originally adopted on February 1, 1995. It is cited in BAAQMD Regulation 2-6-233, and in the BAAQMD Manual of Procedures, Volume II, Part 3, Major Facility Review, Section 4.16.

The permit shield, as set out in 40 CFR 70.6(f), is intended to provide certainty to a source, that if a decision of non-applicability has been documented in the title V permit, enforcement action will

not be taken against the source on the basis of that requirement until the decision is reviewed formally by the permitting authority, including public notice and EPA review.

The Air District understands that the permit shield would only be valid as long as the shield was in place. If the Air District or EPA discovered that the basis for the shield was invalid, the Air District or EPA could re-open the permit after due notice and delete the shield. The applicable requirement from which the facility had been shielded would then apply. Enforcement actions and litigation could be initiated as of the date that the revised permit was re-issued. Further, the use of "may" rather than "shall" in the italicized language provides for enforcement discretion to make the enforcement action retroactive if the Air District or EPA determines that the shield was invalid based on any fraudulent representations in the permit application.

If the Air District determines that a permit shield was granted in error, the Air District will reopen the permit, delete the permit shield, and take appropriate enforcement action.

The Air District recognizes that the permit shield regulations may not be clear to permit holders and the public. The Air District's Manual of Procedures requires the use of the current permit shield language. However, the Air District commits to explaining the permit shield regulations fully in Statements of Basis for initial permits and permit renewals where the permit contains permit shields, or any revision where a permit shield is granted or revised. Further, the Air District will consider revising BAAQMD Regulation 2-6-233 and Manual of Procedures, Volume II, Part 3, Major Facility Review, Section 4.16.to provide more clarity the next time these provisions are open for revision.

The Air District would appreciate further clarification on why EPA believes that the italicized language shown from the Air District's title V permit will unnecessarily limit the authority of the District, EPA, and the public to initiate enforcement actions, and will continue to work with EPA to find ways to improve the permit shield language in our title V program.

EPA Response: The EPA appreciates the BAAQMD's feedback and acknowledges the workload of our recommendation since this language is codified in the District's Regulation 2-6-233. However, the practice of updating permit shields as enforcement issues arise and the possibility of retroactive enforcement actions do not alleviate our concerns.

Pursuant to 40 CFR 70.6(f), permit shields only provide a shield from federal enforcement (or delegated enforcement authority) for the applicable requirement that is subsumed by the permit, such that compliance with the terms and conditions of the permit is deemed compliance with the subsumed requirements. This is also true for a permit shield that excludes an applicable requirement. The EPA believes the italicized language in the permit shield section of the District's permit exceeds this intent. The EPA and the permitting authority can investigate, and initiate enforcement actions and litigation outside of the realm of the shield (i.e., against potential non-compliance with the terms and conditions of the permit). For example, the District and the EPA can conduct facility inspections, which can include verifying the veracity of criteria the District relied on

to grant a shield. The ambiguity of the phrase "enforcement actions" could have the unintended consequence of impairing the ability to use this and other investigative tools, or give the impression that the District's initiation of a compliance investigation exceeds BAAQMD's regulatory authority; which conflicts with the permit shield provisions in 40 CFR 70.6(f)(3)(iv).

The BAAQMD must ensure that its title V permits do not contain any suggestion that the EPA or the District cannot take steps to determine a source's compliance status, which may lead to an enforcement action. This finding and recommendation remain as drafted.

3. Finding 2.3/6.2

BAAQMD Comment on Finding 2.3: We appreciate the recommendation. The Air District will amend the current title V checklist and use the updated version to document the internal review by each division including the Engineering, Compliance and Enforcement, and Legal Divisions.

BAAQMD Comment on Finding 6.2: Please see comment for Finding 2.3 above.

EPA Response: The EPA appreciates the BAAQMD's efforts in incorporating our recommendations. We will continue to work with the BAAQMD in tracking the recommendations via a workplan as noted in the report. These findings and recommendations remain as drafted.

4. Finding 2.4

BAAQMD Comment: The Air District agrees that compliance history can be helpful information in the statement of basis. For title V facilities that have compliance issues, Air District staff in Engineering and Compliance and Enforcement will coordinate to compile and include compliance history in the statement of basis when processing title V permit applications.

EPA Response: The EPA appreciates the BAAQMD's efforts in incorporating our recommendations. We will continue to work with the BAAQMD in tracking the recommendations via a workplan as noted in the report. This finding and recommendation remain as drafted.

5. Finding 2.6

BAAQMD Comment: The recent changes in the Air District's NSR permit program apply to all facilities under our jurisdiction and many of the Air District's title V facilities are within overburdened communities. Projects in title V facilities are first reviewed and approved in Air District's NSR permit program and then incorporated into title V permits. Even though the Air District has no separate discussions about environmental justice or overburdened communities in the title V permitting process, a project that is being added into a title V permit has already gone through a review process that includes public notice requirements and lower health risk limit within overburdened communities. Engineering evaluations which have detailed analysis and

discussions on these requirements are included in the statement of basis for the corresponding title V permit application.

Air District staff will work with EPA staff to identify opportunities to further enhance public involvement and address environmental justice concerns specifically in the title V process that cannot be addressed in Air District's NSR permit program. We also welcome training opportunities for Air District staff on environmental justice.

EPA Response: The EPA appreciates the BAAQMD's comment and recognizes that many title V sources with NSR projects may have undergone EJ analyses during the NSR process. We clarified this point in the discussion and noted that the BAAQMD does not conduct additional EJ analyses during the title V process. We look forward to working with the BAAQMD to identify opportunities for EJ work in the District's title V program.

6. Finding 2.7

BAAQMD Comment: The Air District decided to cite "BACT" meaning Best Available Control Technology, "RACT" meaning Reasonably Available Control Technology, or "Offsets" for NSR requirements for some practical reasons. First of all, citing with the conventional names of these requirements instead of the particular provisions in the NSR rules helps the regulated communities and public to understand the origin of the requirements even if they are not familiar with the Air District's rules and regulations. In addition, the Air District's NSR rules have been amended multiple times over the years. Besides the contents in some provisions, the numbering of the provisions within a rule can change during an amendment. On the other hand, these conventional names remain the same. Based on past experience in the Air District, citing with the conventional names has helped to reduce the burden to update the citations in permit conditions during a rule amendment for the large number of permits that the Air District issues and maintains.

NSR/PSD permits are not currently cited as the basis for any permit conditions because the statement of basis of each title V permit application includes all relevant engineering evaluations providing the detailed analysis to verify the NSR determinations. Whenever a permit condition is added to or modified in a title V permit, the engineering evaluation(s) related to the permit condition(s) is included as an attachment to the statement of basis. The engineering evaluations are part of the title V permit application documents.

In addition, the Air District permits a number of sources that have been modified and reviewed in many permit applications throughout the years, such as those in refineries and landfills. Having to cite back to the permit application where a specific analysis originated is burdensome.

District staff will work with EPA staff to find ways to assure compliance with 40 CFR 70.6(a)(1)(i) while considering the above factors.

EPA Response: The EPA appreciates the additional context regarding the BAAQMD's citations. However, we maintain the position that the title V conditions should reference the origin permit when that information is available. While it is important for engineering evaluations from related NSR actions to be included as part of the title V permit record, this practice does not satisfy the requirement to cite the origin of each title V condition. We are happy to provide examples of permits that include similar citations if the District would find this helpful. The finding and recommendation remain as drafted.

7. Finding 2.9

BAAQMD Comment: The Air District has been utilizing various methods to ensure that SIP-approved regulations are included and are correctly dated and marked as federally enforceable. Engineering staff maintains a title V permit template that is updated on a regular basis to show the correct dates of adoption for SIP-approved and newly amended Air District regulations. The Air District permit staff also utilize the same EPA web page as indicated in the draft report, which lists the current BAAQMD SIP-approved regulations, as a reference while processing title V permits. The Air District is currently recruiting for the title V Permit Program Engineer position, who will provide support to title V permit engineers and perform quality control to ensure consistency and accuracy, including checking the SIP-approved regulations. The Air District will continue to identify additional measures to reduce these errors in our title V permits.

EPA Response: The EPA appreciates the additional context provided in the BAAQMD's comment and is happy to know that the BAAQMD is already implementing several of our recommendations. This finding and recommendation remain as drafted.

8. Finding 2.10

BAAQMD Comment: The Air District's permitting staff has combined Sections IV and VII into one section for some title V permits but received mixed feedback regarding the effectiveness of this approach. In addition, implementing this change increases the processing time of a title V permit application. Considering that the current top priority is to address the existing permitting action backlog, the Air District does not require permitting staff to combine Sections IV and VII as this could delay the processing time of a title V permit application.

EPA Response: The EPA did not intend for Finding 2.10 to suggest the District combine Sections IV and VII. Rather, it was intended to highlight the long timeframe of the District's continued consideration of this formatting change. This finding and recommendation remain as drafted. We are happy to work with the District during the development of the workplan to explore ways to address this finding.

9. Finding 3.1

BAAQMD Comment: The Air District currently provides CAM training on a one-on-one basis to permit engineers during the processing of title V renewal permit applications. We find this to be an effective way to ensure consistent application and review of CAM. The District will continue to verify CAM applicability for permit all title V permit actions (initial, renewals, and significant modifications). Additional group training is always valuable, and the Air District will include other CAM training classes offered by CARB and EPA.

EPA Response: The EPA appreciates the BAAQMD's comment. The finding remains as drafted. The recommendation is amended to explain the District should continue to offer CAM training.

10. Finding 3.2

BAAQMD Comment: It has always been the Air District's intent to include sufficient and appropriate monitoring requirements for VOC-emitting equipment in title V permits to ensure compliance with the Air District's Regulation 8 (Organic Compounds) and other state and federal requirements. Rule 18 of Regulation 8 specifically targets fugitive emissions of VOC from equipment leaks at refineries, chemical plants, bulk plants, and bulk terminals. Applicable monitoring requirements from this rule are listed in Section VII of the BAAQMD title V permits for these facilities.

If unintentional omission or insufficiency is identified for certain VOC-emitting equipment, the Air District will work with EPA to modify individual permits to ensure appropriate monitoring requirements are included in these title V permits.

As we stated in the comment for Finding 2.1, the Air District considers all sections of the permit to be enforceable, and all applicable monitoring requirements are listed in Section IV (Source-Specific Applicable Requirements) of a BAAQMD title V permit. Furthermore, including all applicable monitoring requirements as permit conditions will require an additional administrative task to update these conditions whenever the requirements are amended, which may cause unnecessary delay for issuing title V permits.

EPA Response: The EPA appreciates the BAAQMD's comment and looks forward to working with the BAAQMD to ensure that enforceable monitoring requirements are included in BAAQMD permits for VOC-emitting equipment. As discussed in our response for Finding 2.1, the EPA maintains that the format of the District's title V permits may create confusion about what requirements the source must comply with. In the introduction to Section VII, the BAAQMD permits generally state "this section is only a summary of the limits and monitoring requirements. In the case of a conflict with any requirement in Sections I – VI, the preceding sections take precedence over Section VII." If this section is simply a summary and is not intended to be an enforceable portion of the permit, it is unclear why it is included in the permit. If the details in Section VII are needed to help the Source understand the permit requirements, this information should likely be included in one of the previous sections of the permit or in a manner where it cannot be superseded. The finding and recommendation remain as drafted.

11. Finding 3.3

BAAQMD Comment: The Air District has developed and been using standard permit conditions for synthetic minor operating permits, which specify annual facility-wide emission limits to be 95 tons for any regulated air pollutant, 9 tons for the individual HAP, and 24 tons for all HAPs combined. Based on each facility's unique operation, permit engineers also specify emission limits and the corresponding emission estimate methods for each source category, and the appropriate monitoring requirements as permit conditions. As guidance for permitting different types of sources and setting permit limits, Air District permitting staff have been utilizing the Air District's Permit Handbook, Complex Permitting Handbook for BAAQMD New Source Review Permitting, and Engineering Policy and Procedure Manual. Additional training for applying these existing standard permit conditions and resources can improve the consistency of setting synthetic minor limits.

During the Air District's NSR permitting process, the facility-wide PTE including the new and modified sources being evaluated is determined. The facility-wide potential to emit for each criteria pollutant is used for determining the applicability of the offset requirements. The toxic air pollutant emissions, which include most HAPs, at the facility for the past five years are also calculated to verify compliance with the Air District Regulation 2, Rule 5.

We are also implementing changes to improve tracking of the facility-wide PTE. By October 2023, the Air District will fully transition to a new database to process permit applications and track permitted emissions. This new database will provide tools to track a facility's potential to emit in addition to actual emissions.

We appreciate that EPA identified the available training resource to the Air District. We will include this online training in our permitting staff training curriculum.

EPA Response: The EPA appreciates the additional information about the new database. This finding and associated discussion explain that the District generally sets enforceable synthetic minor limits. We clarified that the District does not have a policy specifically for establishing synthetic minor limits and added information about the guidance material used by the District. The finding and recommendation statements are updated to remove the statements about the District developing an internal policy/guidance for permitting synthetic minor sources and clarify the EPA's evaluation. For reference, the EPA's website includes a compilation of documents with information about limiting PTE and synthetic minor sources.[2] Additionally, the discussion for Finding 5.3 is updated to include a note about the new database that will allow for facility-wide PTE tracking.

12. Finding 4.1

[2] See https://www.epa.gov/title-v-operating-permits/limiting-potential-emit-pte-synthetic-minor-sources.

BAAQMD Comment: The Air District appreciates EPA's recommendations to improve our title V permit program. Engineering staff have initiated and will continue discussions with Community Engagement staff to identify ways to improve community outreach of our title V permit program. Suggestions include extending the public notice period based on community need and feedback, compiling an email distribution list to include community groups from previous community engagement experience of an area, utilizing additional channels, such as social media and websites, for outreach.

The Air District will also review existing translation programs to determine the feasibility of incorporating translation effort in our title V permit program.

EPA Response: The EPA appreciates the BAAQMD's comment and strongly supports the included suggestions. We encourage the BAAQMD to keep the EPA apprised of the District's public engagement efforts so we may share successful practices with other permitting authorities. This finding and recommendation remain as drafted.

13. Finding 4.3

BAAQMD Comment: The Air District appreciates the recommendation and agrees that it can help the public navigate to the relevant dates. We will start to include links to the EPA's title V permit dashboard in our public notice template.

EPA Response: The EPA appreciates the BAAQMD's efforts in incorporating our recommendations. This finding and recommendation remain as drafted.

14. Finding 4.4

BAAQMD Comment: The Air District's Manual of Procedures, Volume 2, Part 3 (Major Facility Review Permit Requirements) contains EPA review requirements similar to the February 5, 2020 amendments to 40 CFR 70.8(a)(1). Specifically, Section 6.1.2 states: "The District shall send the proposed permit to EPA for review at the same time that the public notice is published or after the public comment period, at the APCO's discretion. If the proposed permit has been submitted to EPA, and substantial changes are made due to public comments, the APCO shall withdraw the permit from EPA review, and resubmit a revised proposed permit to EPA, restarting the 45-day review period." For consistency, the Air District will consider adopting the February 5, 2020 amendments to 40 CFR 70.8(a)(1) into BAAQMD Regulation 2, Rule 6 the next time this rule is open for revisions.

EPA Response: The EPA appreciates and concurs with the BAAQMD's comment. The finding and recommendation remain as drafted.

15. Finding 4.6

BAAQMD Comment: The Air District commits to contacting the tribal council office of Robinson Rancheria in Lake County, California to find out the address to send notice of draft title V permits for any source within 50 miles of the Robinson Rancheria.

EPA Response: Though contacting the Robinson Rancheria as indicated in the BAAQMD's comment may satisfy the minimum regulatory requirements, the EPA strongly encourages the BAAQMD to explore opportunities to include all Tribes who may be impacted by a permitting action, including Tribes who have not been approved as "affected states" under the title V program. The finding includes a list of the five federally recognized Indian Reservations within the BAAQMD counties and a link to a map of tribal lands in California. These resources can be used to evaluate whether a permitting action could potentially impact a Tribe. The finding and recommendation remain as drafted.

16. Finding 5.1

BAAQMD Comment: The Air District is committed to working with the EPA to improve the process. As recommended, Air District management and staff will conduct a review and then develop a plan of action for issuing title V permit actions in a timely manner.

EPA Response: The EPA appreciates the BAAQMD's willingness to incorporate our recommendations. We look forward to working with the BAAQMD to develop and implement the workplan. This finding and recommendation remain as drafted.

17. Finding 5.2

BAAQMD Comment: The Air District's current title V permit process already makes the statement of basis available to the public and the EPA by posting it on the Air District website along with the proposed title V permit and providing the link in public notices. The Air District agrees that incorporating the EPA's 2020 amendments to 40 CFR 70.7 and 70.8 in our title V rules will further ensure consistency. The Air District will consider incorporating EPA's 2020 amendments to 40 CFR 70.7 and 70.8 into BAAQMD Regulation 2, Rule 6 the next time these provisions are open for revision.

EPA Response: The EPA appreciates and concurs with the BAAQMD's comment. The finding and recommendation remain as drafted.

18. Finding 5.3

BAAQMD Comment: As stated in the comment for Finding 3.3, the applicability of offset requirements in the Air District's NSR program is also based on facility-wide potential to emit. When processing NSR applications for new and modified sources, Air District's permitting staff includes an analysis for the offset requirements in which staff explains whether any offset

requirements are triggered. This analysis requires a determination of the facility's potential to emit, which serves to verify major source applicability.

We are also implementing changes to improve tracking of the facility-wide PTE. By October 2023, the Air District will fully transition to a new database to process permit applications and track permitted emissions. This new database will provide tools to track a facility's potential to emit in addition to actual emissions.

On the other hand, this Finding serves as a reminder to the Air District that additional permitting training, especially for new staff, is needed to ensure consistency in our NSR permit review process during this high staff turnover period.

EPA Response: Based on our interviews, our understanding is that the District is not consistently evaluating the facility-wide PTE during each minor source modification action. During our site visit, it appeared that the District was relying on actual emissions to verify that sources, which were previously determined to be minor sources, are still minor sources. If the District correctly tracks facility-wide PTE for its sources, then it will be able to accurately verify that sources are not subject to the title V program due to their PTE. As discussed in response to an earlier comment, the discussion was updated to note the BAAQMD's transition to a new database that will include tools for tracking facility-wide PTE.

19. Finding 5.4

BAAQMD Comment: Since the submittal of the title V Workplan on December 21, 2009, the Air District has been publishing public notices and providing a 30-day EPA review period for initial synthetic minor permits. EPA had no additional comment in regard to this proposed corrective action in the 2009 Title V Workplan. It is the Air District's understanding that our program satisfies the requirements in BAAQMD Rule 2-6-423 as currently implemented. Section 2-6-423 states, "The APCO shall take action on applications for synthetic minor operating permits and for synthetic minor operating permit revisions as follows:" The section includes several sub-sections, some of which expressly apply to revisions while others do not. Section 2-6-423.4 that EPA cites does not expressly apply to "revisions." By contrast, Sub-sections 2-6-423.5 and 2-6-423.6 expressly apply to revisions. Therefore, the Air District interprets that 2-6-423.4 applies only to new synthetic minor permits.

In general, the Air District prefers a simpler process for revisions to synthetic minor permits for a number of reasons:
(1) The facilities that apply for synthetic minor permits are qualitatively different from the title V facilities. They are smaller and their emissions are less significant. Their permitting staff is generally smaller and less sophisticated. As such, the Air District and the facilities expect a qualitative difference in the process to revise a synthetic minor permit. If this process includes the same formalities as the process to revise a title V permit, a facility could opt to have a title V permit

instead and the Bay Area would lose the opportunity to get voluntary emission reductions from the facility.
(2) The Air District has expanded the use of synthetic minor limits to avoid applicability of other requirements. (See BAAQMD Regulation 2, Rule 6, Sections 101, 420, and 422.) If a synthetic minor limit applies to only a small part of a facility or permit, public participation and EPA review of a revision of such a permit are inappropriate and would discourage the use of this type of synthetic minor limit, again depriving the Bay Area of some potential emission reductions.
(3) Public participation and EPA review are expensive and resource-intensive, which is not appropriate for revisions to synthetic minor permits at these smaller facilities. The facility is expected to pay for publishing the public notice. District staff must handle the publication of the notice and respond to any comments. The Air District may incur the expense of a public hearing. While the Air District does charge some fees for the application process (but not any hearing expenses), EPA has not mandated fees for synthetic minor activities.
(4) Public participation and EPA review introduces title V-like delays into the permitting process for smaller facilities. A 30-day public participation and EPA review process are actually equivalent to a 2-3 month delay. It takes about 10 days to publish a notice in most newspapers "of general circulation." After the public participation and EPA review process, the Air District must respond formally to any comments by the public or EPA.
(5) Revisions to synthetic minor permits are generally about the details of the permit or adding or subtracting emission units. The strategy by which the facility maintains its emissions under the title V thresholds is rarely changed. Introducing public participation and EPA review into the revisions would add unnecessary delays and costs to the synthetic minor permit revisions.

EPA Response: As the BAAQMD stated, Section 2-6-423 requires the APCO to take action on applications for permit and permit revisions "as follows". Section 2-6-423.4 is a subsection that follows so the EPA believes it could apply to permit revisions. However, Section 2-6-423.4 does not expressly state it is applicable to permit revisions, so the EPA agrees that the applicability is unclear. The finding and discussion are amended to explain that the requirement is unclear. Additionally, the recommendation is updated to recommend the District consider updating Regulation 2, Rule 6 to also provide revisions to synthetic minor permits for EPA and public review when the revisions involve a substantial change to a synthetic minor limit.

Additionally, please note that our NSR and title V rules have been updated to allow for e-noticing in lieu of or in addition to a newspaper.

20. Finding 7.1

BAAQMD Comment: The Air District appreciates the recommendation and is continuing to implement pathways for collaboration amongst its staff. The Air District will continue to ensure that the District Counsel's office provides effective legal support to the Compliance and Enforcement and Engineering Divisions.

EPA Response: The EPA appreciates the BAAQMD's comment and the BAAQMD's efforts in incorporating our recommendations. This finding and recommendation remain as drafted.

21. Finding 7.2

BAAQMD Comment: The Air District uses employee timesheets with accounting billing codes that specify title V-related work to track the amount of time that permit engineers and other staff spend on title V program activities. The Engineering Division also tracks the expenditures through Program 506, our title V program. Other divisions use Bill Code 80 and their specific programs such as activity in Compliance and Enforcement and Source Test. Title V revenues are tracked separately from all other revenues collected the Air District. We have a dedicated ledger account for that purpose (Account Number 41305).

The Air District uses a cost recovery methodology as described in the attached 2023 Cost Recovery Report (https://www.baaqmd.gov/~/media/dotgov/files/rules/reg-3-fees/2023-amendment/documents/20230419_03_crr_updtd_reg0300-pdf.pdf?la=en&rev=1e71abd9feb54f598f6133232e438769) to impose a schedule of fees to generate revenue to recover the costs of activities related to implementing and enforcing air quality programs. On a regular basis, the Air District has considered whether these fees result in the collection of a sufficient and appropriate amount of revenue in comparison to the cost of related program activities. As shown in Figure 5 of the report, the title V program cost recovery is 104.82%, which means we have recovered our costs for the program over the past 3 years. The cost recovery percentage does not consider work backlog, the staff time needed for the Air District to meet its regulatory obligations and the potential reduced level of service.

The Air District is currently undergoing a Management Audit and is embarking on a district-wide Strategic Planning process to establish agency priorities and securing the necessary resources to meet the goals we set for ourselves over the next five years, including addressing the title V permitting backlog.

EPA Response: The EPA appreciates the additional context provided in the BAAQMD's comment. This finding explains the EPA's understanding of the BAAQMD's fee structure and provides updated EPA fee guidance, while acknowledging the District's application backlog. We added a note about the management audit to the discussion in Finding 7.6. See EPA response below. As noted in the response to 7.6, we look forward to working with the District to implement our recommendations. This finding and recommendation remain as drafted.

22. Finding 7.3

BAAQMD Comment: The Air District staff in Compliance and Enforcement and Engineering Divisions are working together to enhance the Enforcement referral process and improve information-sharing across divisions. The referral process will utilize a digital program, AirTables, to track and send information to the assigned Inspector and Engineer for resolving compliance

concerns. This tracking system will improve communications and coordination whenever questions and concerns arise that pertain to permitting and enforcement matters.

EPA Response: The EPA appreciates the BAAQMD's comment. The discussion for this finding was updated to include a note about the planned communication improvements citing the digital enforcement referral process as an example.

23. Finding 7.4

BAAQMD Comment: The Air District's Compliance and Enforcement Division has a robust onboard training program that includes training on title V inspections, investigations and required reporting. Staff in the Compliance and Enforcement and Engineering Divisions will work together to build upon the training program by including permitting staff in the training program to ensure consistent application and implementation of the title V program.

EPA Response: The EPA has modified the discussion to clarify the Compliance and Enforcement Division's training program using the information provided in the BAAQMD's comment.

24. Finding 7.6

BAAQMD Comment: In response to the Engineering Division's staffing challenges, the Air District has been actively recruiting permitting staff. In the past two years, four new staff positions in the Engineering Division were approved. We are currently in various stages of the recruitment process for nine vacancies in Engineering. Only seven of these positions will work on the title V program.

The Air District is also updating technologies to improve the efficiency of permit application and renewal processes. Starting October 2023, permitting staff will use a new system to process permit applications and renew existing permits, which provides new and improved tools to reduce staff time on administrative tasks and enhance permit data quality.

The Air District will need to conduct a review of the permit issuance process, develop a plan for issuing title V permits in a timely manner, and determine what staffing level is needed to address the title V backlog. As stated in the comment to Finding 5.1, The Air District is committed to working with EPA to improve the process.

The Air District is currently undergoing a Management Audit and is embarking on a district-wide Strategic Planning process to establish agency priorities and securing the necessary resources to meet the goals we set for ourselves over the next five years, including addressing the title V permitting backlog.

EPA Response: The EPA has modified its discussion to reflect the new information that the BAAQMD provided and looks forward to working with the District to implement the recommendation. The finding and recommendation remain as drafted.

25. Finding 8.1

BAAQMD Comment: The Air District has been making permit applications available to the public through our public record request. Any individual or organization can submit a public record request on the Air District's website.

EPA Response: The EPA maintains the recommendation to make permit applications readily available to the public when informing its permit decisions. Posting applications on the District's website upon receipt or once deemed complete provides more time for the public to consider potential impacts of a project. A member of the public may not know to submit a public record request if information about the received application is not posted on the District's website. The recommendation was updated to explain that the EPA recommends making the applications readily available by posting them on the District's website.

26. Finding 8.2

BAAQMD Comment: The Air District will review and determine the best way to provide training on the file retention policy for all engineering staff.

EPA Response: The EPA appreciates the BAAQMD's comment and the BAAQMD's efforts in incorporating our recommendations. This finding and recommendation remain as drafted.

27. Finding 8.3

BAAQMD Comment: The Air District has identified and been implementing a modern database to replace the legacy systems. By October 2023, the Air District will fully transition to a new database which provides new and improved tools to process permit applications and track permitted emissions. The new system will provide opportunities to further improve title V permitting.

EPA Response: The EPA has modified its discussion to reflect the new information that the BAAQMD provided. However, it is unclear to the EPA how the modern database referenced in the BAAQMD's comment relates to the databases referenced in the EPA's discussion. Additionally, the EPA removed the recommendation to explore modern database options.