

**Mojave Desert Air Quality Management District
Title V Operating Permit Program Evaluation**

FINAL REPORT

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Conducted by the

U.S. Environmental Protection Agency
Region 9
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EXECUTIVE SUMMARY

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

EPA Region 9 oversees 43 separate air permitting authorities with approved title V programs (35 in California, three in Nevada, four in Arizona, and one in Hawaii). Because of the significant number of permitting authorities, Region 9 has committed to performing, on an annual basis, one comprehensive title V program evaluation of a permitting authority with 20 or more title V sources. This approach will cover about 85% of the title V sources in Region 9 once EPA completes evaluation of those programs.

Region 9 recently conducted a title V program evaluation of the Mojave Desert Air Quality Management District (MDAQMD or District). The District's jurisdiction includes the northern portion of San Bernardino County and the eastern portion of Riverside County, in California. (See Appendix A, Air Pollution Control Agencies in California.) This is the eighth title V program evaluation Region 9 has conducted. The first seven were conducted at permitting authorities in Arizona, Nevada, California, and Hawaii. The EPA Region 9 program evaluation team consisted of the following EPA personnel: Kerry Drake, Associate Director, Air Division; Gerardo Rios, Chief of the Air Permits Office; Ken Israels, Program Evaluation Advisor; Roger Kohn, MDAQMD Program Evaluation Coordinator; and Geoffrey Glass, Roberto Gutierrez, and Andrew Chew, Air Permits Office Program Evaluation Team Members.

The evaluation was conducted in four stages. In the first stage, EPA sent MDAQMD a questionnaire focusing on title V program implementation in preparation for the site visit at MDAQMD's office. (See Appendix B, Title V Questionnaire and MDAQMD Responses.) During the second stage of the program evaluation, Region 9 conducted a review of MDAQMD's title V permit files maintained by EPA, including copies of permits, statements of basis, permit applications, and correspondence. The third stage of the program evaluation was the site visit, which consisted of Region 9 representatives visiting the MDAQMD office to interview District staff and managers. The site visit took place January 23-27, 2012. The fourth stage of the program evaluation was follow-up and clarification of issues for completion of the draft report.

San Bernardino and Riverside Counties, the two counties within MDAQMD's jurisdiction, have a combined population of 534,150.¹ MDAQMD has issued 36 initial title V

¹ This estimate is based on 2010 U.S. Census Bureau data available on the internet at this URL: <http://quickfacts.census.gov/qfd/states/06000.html> and using census block groups with centroids inside boundaries of the MDAQMD. For additional detail, please see the map found in Appendix E.

operating permits, including all existing major sources, and 26 renewals. The majority of title V operating permit holders are power plants, natural gas compressor stations, and various types of manufacturing facilities.

MDAQMD, like many other air pollution control districts in California, has a local permitting program in place that includes the issuance of two types of permits. The Authority to Construct (ATC) permit, issued prior to construction of the source or emission unit, typically contained conditions required for the construction and initial operation of the source or emission unit. The ATC permit is then converted to an operating permit, or Permit to Operate (PTO), after construction was completed and operation of the source or emission unit had commenced.

At the beginning of the implantation of the title V program in California, the California Air Resources Board (CARB) and many air districts in the State told EPA that the title V program was duplicative of the existing local programs, and did not always mesh well with these programs. In light of this, California (and other States) and EPA began a lengthy process to develop guidance on how best to implement the required federal title V program in states with existing, mature permitting programs. These discussions resulted in several implementation guidance documents, including two White Papers.

Despite this process, and the success of title V implementation in California generally, MDAQMD has struggled with the demands of implementing what District staff often refers to as a “bifurcated” permitting program, in which each major source has both a set of local permits and a title V permit. The dominant theme that has emerged from EPA’s evaluation of MDAQMD’s title V program is that the District has invested most of its permitting resources in its local program and de-emphasized title V to a such an extent that implementation is lacking in several areas. The District’s de-emphasis of the title V program has resulted in limited staff training on title V policy and programmatic issues, flawed incorporation of applicable requirements from federal regulations into title V permits, poor documentation of determinations the District has made during the title V permit issuance process, and a field inspection program that generally does not use title V permits as the basis for performing compliance inspections. Many of our findings in this report document the shortcomings we observe in the District’s title V implementation, which we believe are exacerbated by MDAQMD’s assumption that it can effectively implement title V with little or no enhancement of its local program.

Based on Region 9’s program evaluation of MDAQMD, some major findings are provided below:

1. MDAQMD’s statements of basis do not adequately describe regulatory and policy issues or document decisions the District has made in the permitting process, in accordance with EPA guidance. (Finding 2.2)
2. MDAQMD does not consistently incorporate applicable requirements from federal regulations into title V permits in an enforceable manner. (Finding 2.4)
3. The District is not implementing the Compliance Assurance Monitoring rule. (Finding 2.6)

4. MDAQMD does not include adequate periodic monitoring requirements in its title V permits. (Findings 3.1 and 3.2)
5. MDAQMD's title V public notification process does not address the area's changing demographics. (Finding 4.2)
6. The District has never received any comments from the general public on proposed title V permits. (Finding 4.3)
7. MDAQMD has issued many title V permit renewals, but has a backlog of overdue renewals. (Finding 5.1)
8. MDAQMD reviews all reports submitted by title V sources and uses the information to initiate compliance actions. (Finding 6.1)
9. MDAQMD generally does not use title V permits as a basis for performing on-site inspections. (Finding 6.2)
10. The District does not account for how the title V fees it collects are used to implement the title V program. (Finding 7.1)
11. MDAQMD does not have a structured approach for training title V permit writers. (Finding 7.2)

Our report provides a series of findings (in addition to those listed above) and recommendations that should be considered in addressing our findings. We have given MDAQMD an opportunity to review these findings and to consider our recommendations in the context of their organization, priorities, and resources. In response to our report, as noted in the project workplan that outlines the process we followed in performing this evaluation, MDAQMD should prepare and submit to EPA a workplan that outlines how it intends to address our findings. (See Appendix C.) The District could do this either by using the recommendations found in this report or mutually agreed-upon alternatives.

1. INTRODUCTION

Background

In 2000, the Office of Inspector General (OIG) initiated an evaluation on the progress of issuing title V permits by EPA and states at the request of EPA Region 5 management. Region 5 was concerned about the progress that its state and local air pollution control agencies were making in issuing title V permits under the Clean Air Act (CAA or the Act). In planning the evaluation, OIG expanded the scope to include other EPA Regions because problems in issuing title V permits were not limited to Region 5. The purpose of OIG's evaluation was to identify factors delaying the issuance of title V permits by selected state and local agencies and to identify practices contributing to timely issuance of permits by those same agencies.

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

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

EPA Region 9 oversees 43 separate air permitting authorities with approved title V programs (35 in California, three in Nevada, four in Arizona, and one in Hawaii). Due to the significant number of permitting authorities, Region 9 has committed to performing one comprehensive title V program evaluation every year of a permitting authority with 20 or more title V sources. This would represent about 85% of the title V sources in Region 9 once EPA completes evaluation of those programs.

History of Stationary Source Permitting in California

The State of California has been engaged in efforts to improve air quality for more than 60 years. The California Air Pollution Control Act of 1947 authorized the creation of an Air Pollution Control District in every county of the state. That same year, the Los Angeles County

² See Report No. 2002-P-00008, Office of Inspector General Evaluation Report, AIR, EPA and State Progress In Issuing title V Permits, dated March 29, 2002.

Air Pollution Control District, the first air agency in the nation and the predecessor of today's South Coast Air Quality Management District, was created. Los Angeles County APCD established the first permitting requirements for industrial sources of air pollution. The MDAQMD was created by the California Legislature and came into existence on July 1, 1993. (Prior to the creation of MDAQMD, there were five predecessor agencies that covered similar geographic areas.)

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

The 1990 CAA amendments expanded the federal permitting requirements to add ozone nonattainment classifications (marginal, moderate, serious, severe, extreme), corresponding offset ratios for the NSR program, and the title V permit program for major stationary sources. The over-arching goal of the title V program is to improve major stationary source compliance with all applicable federal CAA requirements. This is achieved by requiring states to develop and implement federal operating permit programs pursuant to title V of the CAA, and sources to obtain title V permits containing all their applicable CAA requirements.

By this time the agencies that preceded MDAQMD, and beginning in 1993 the MDAQMD, like many other air pollution control districts in California, already had a permitting program in place that included the issuance of two types of permits. The ATC permit, issued prior to construction of the source or emission unit, typically contained conditions required for the construction and initial operation of the source or emission unit. The ATC permit is then converted to a PTO after construction was completed and operation of the source or emission unit had commenced. During the conversion from ATC to PTO, certain ATC permit conditions were not retained in the PTO if the ATC conditions were determined to be obsolete or irrelevant because they were construction related. Furthermore, since these operating permits are linked to fee payment and renewed annually, new permit conditions were added or revised each year as new rules became applicable. Unlike the new title V program, these local operating permits were not required to contain all CAA applicable requirements.

Soon after the federal title V permit program was created, CARB and many air districts in the State told EPA that the title V program was duplicative of the existing local programs, and did not always mesh well with these programs. In light of this, California (and other States) and EPA began a lengthy process to develop guidance on how best to implement the required federal title V program in states with existing, mature permitting programs. These discussions resulted in several implementation guidance documents, including two White Papers.

The first White Paper developed nationally with input from CARB and California districts, addressed the development of Part 70 applications, and included a discussion of federal

enforceability, obsolete ATC permit conditions, and the simultaneous revision of NSR permits and issuance of title V permits.

California air districts and CARB, via the California title V Implementation Working Group, provided key leadership in the development of the second White Paper. The districts were instrumental in raising and resolving many of the permitting issues that were arising in the state, such as the streamlining of multiple overlapping applicable requirements.

Other important topics that EPA and the California air districts discussed during this period included periodic monitoring and permit processing. These discussions resulted in the issuance of two additional implementation guidance documents specific to California Agencies. First, a guidance document was developed by EPA, CARB, and the California Air Pollution Control Officers' Association (CAPCOA), with MDAQMD participation, in 1999 to provide periodic monitoring recommendations for generally applicable SIP emission limits. Also in 1999, EPA and CAPCOA reached agreement on several title V permit processing issues, including required statement of basis elements.

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

Title V Program Evaluation at MDAQMD

Region 9 conducted a title V program evaluation of MDAQMD. This is the eighth title V program evaluation Region 9 has conducted. The first seven were conducted at permitting authorities in Arizona, Nevada, California, and Hawaii. The EPA Region 9 program evaluation team for this evaluation consisted of the following EPA personnel: Kerry Drake, Associate Director, Air Division; Gerardo Rios, Chief of the Air Permits Office; Ken Israels, Program Evaluation Advisor; Roger Kohn, MDAQMD Program Evaluation Coordinator; and Geoffrey Glass, Roberto Gutierrez, and Andrew Chew, Air Permits Office Program Evaluation Team Members.

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

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

The third stage of the program evaluation was the site visit, which consisted of Region 9 representatives visiting the MDAQMD office to conduct further file reviews, interview MDAQMD staff and managers, and review the District's permit-related databases. The purpose of the interviews was to confirm the responses in the completed questionnaire and to ask clarifying questions. The site visit took place January 23-27, 2012.

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

MDAQMD Description

The MDAQMD was created by the California Legislature in 1993. The District's mission is "to attain and maintain a healthful environment while supporting strong and sustainable economic growth."³ MDAQMD is organized into 7 departments: Administrative Services, Communication Relations & Education, Compliance, Executive Offices, Planning/Rulemaking/Grants, Stationary Sources, and Surveillance.

Stationary source operating permits, including title V permits, are issued by the Stationary Sources Department. Compliance and enforcement activities, such as facility inspections and source testing, and preparing enforcement cases are handled by the Compliance Department.

The MDAQMD Title V Program

EPA granted MDAQMD title V program interim approval, which became effective on March 6, 1996, and full approval, which became effective on November 30, 2001. EPA also approved a program revision that became effective on January 1, 2004. See 40 C.F.R. Part 70, Appendix A.

Part 70, the federal regulation that contains the title V program requirements that states must incorporate into their own title V program, requires that a permitting authority take final action on each permit application within 18 months after receipt of a complete permit application. The only exception is that action on an application for a minor modification must be taken within 90 days after receipt of a complete permit application.⁴ MDAQMD's local rules contain the same timeframes for title V permit issuance.

³ From Mission Statement posted on MDAQMD website.

⁴ See 40 C.F.R. 70.7(a)(2) and 70.7(e)(2)(iv).

When MDAQMD's title V program was first approved, the District determined that there were approximately 30 sources that were subject to title V permitting, plus some additional facilities for which the District needed additional information to calculate the potential to emit and determine title V applicability. The District generally has sufficient permitting resources and has processed initial title V permit applications in a timely manner, but currently has a backlog of permit renewal applications. Currently MDAQMD has 36 active title V sources, has issued all initial permits, and renewed 26 permits at least once.

EPA's Findings and Recommendations

The following sections each include a brief introduction, and a series of findings, discussions, and recommendations. The findings are grouped in the order of the program areas as they appear in the title V questionnaire. However, this report does not include a section on General Permits, which is covered in the questionnaire, since MDAQMD does not issue General Permits as part of its title V program.

The findings and recommendations in this report are based on EPA's internal file reviews performed prior to the site visit to MDAQMD, the District's responses to the title V Questionnaire, interviews and file reviews conducted during the January 23-27, 2012 site visit, and follow-up phone calls made since the site visit.

2. PERMIT PREPARATION AND CONTENT

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

2.1 Finding: MDAQMD permit writers lack the training and experience necessary to write effective title V permits and statements of basis.

Discussion: Based on staff interviews, we find that District permit writers need training on key title V regulatory provisions and policy matters relating to periodic monitoring, Compliance Assurance Monitoring (CAM), permit shields, and streamlining of multiple overlapping applicable requirements.

Recommendation: Permit writers should attend EPA, ARB, and CAPCOA training courses regarding title V permit development issues. In addition, permit writers review applicable internet resources, including EPA Region 3's Title V Permit Writer Tips, Region 9's Title V Permit Review Guidelines, and the EPA HQ document, The Proof is in the Permit. Links to these documents can be found on Region 9's website.⁵

2.2 Finding: MDAQMD's statements of basis do not adequately describe regulatory and policy issues or document decisions the District has made in the permitting process, in accordance with EPA guidance.

Discussion: Part 70 requires title V permitting authorities to provide "a statement that sets forth the legal and factual basis for the draft permit conditions" (40 C.F.R. § 70.7(a)(5)). This requirement is found in District Rule 1203(B)(1)(a)(i). The purpose of this requirement is to provide the public and EPA with the District's rationale on applicability determinations and technical issues supporting the issuance of the proposed title V permit. The statement of basis should document the regulatory and policy issues applicable to the source, and is an essential tool for conducting meaningful permit review.

EPA has issued guidance on the required content of statements of basis on several occasions. This guidance has consistently explained the need for permitting authorities to produce statements of basis with sufficient detail to document their decisions in the permitting process. For example, the EPA Administrator's May 24, 2004 Order

⁵ <http://www.epa.gov/region9/air/permit/titlev-public-part.html>

responding to a petition to EPA to object to the proposed title V permit for the Los Medanos Energy Center includes the Administrator's response to statement of basis issues raised by the petitioners.⁶ The Order states that:

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

Appendix D of this report contains a summary of EPA guidance on required statement of basis elements. The statements of basis we reviewed do not provide the level of detail and information specified by EPA guidance. We discuss the primary deficiencies and areas for improvement below.

For initial title V permits, the District produced what it calls a "Statement of Legal and Factual Basis." EPA reviewed many MDAQMD statements of basis and found that they do not adequately describe regulatory and policy issues or document decisions the District made in the permitting process. In most cases, MDAQMD statements of basis were silent on periodic monitoring, CAM, the decision to grant or deny requests for permit shields, applicability determinations (including a discussion of inapplicable requirements that could reasonably be thought to apply to the source) and exemptions, alternative operating scenarios, and decisions regarding the streamlining of multiple overlapping applicable requirements. Based on our interviews and verification of the records, the District typically copied the permit content requirements of Rule 1203 (Federal Operating Permits), and made general statements such as "completed" or "Appropriate conditions are included in the Title V Permit to ensure compliance with the following requirements," which provide little information for permit reviewers. We also note that title V permit content requirements in a permitting authority's title V regulations are not a sufficient template for providing statement of basis content. The statements of basis provided little or no detail on applicable New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations, failing to provide any discussion of which requirements and compliance options apply. For example, the statement of basis for Continental Fiberglass identifies the NESHAP for reinforced plastic composites production, 40 C.F.R. 63, Subpart WWW, as an applicable requirement, but contains no discussion of which portions of the regulation apply to the facility, based on its operations, and which compliance options the source has selected. The statement of basis for CEMEX California Cement lists

⁶ This document is available in the Title V petition database on the EPA Region 7 website at: <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2001.htm>.

NSPS Subpart OOO and NESHAP Subpart LLL as applicable requirements, but does not discuss the requirements. We found the same lack of detail in all District statements of basis that we reviewed.

For title V permit renewals, the District has re-used the statements of basis produced during initial permit issuance, without updating them or making any qualitative changes. During our site visit, it was clear from interviewees that the District questions the value of producing statements of basis. Less experienced permit writers were not familiar with the requirement, while more experienced staff expressed the idea that statements of basis are superfluous as long as permits are well-written and citations of origin and authority are accurate. However, this means that the deficiencies noted above continue in the renewal process.

Recommendation: The District must produce adequate statements of basis for all title V permitting actions (initial permits, revisions, and renewals), and should commit to improving the scope and content of these documents in accordance with EPA guidance in future permitting actions. To help the District improve the quality of its statements of basis, we commit to providing more regular feedback on the District's statements of basis in the future via formal and informal comments on proposed permits.⁷

2.3 Finding: While MDAQMD appears to streamline applicable requirements in its title V permits, the District does not provide the necessary analysis in its statements of basis.

Discussion: Title V sources are frequently subject to multiple overlapping applicable requirements such as emission limits, monitoring, record keeping, and reporting requirements, based on NESHAP, NSPS, SIP rules and NSR permit conditions. EPA addressed this issue in White Paper Number 2 early in the development of the title V program.⁸ The guidance presented a step-by-step process for permit applicants to compare overlapping applicable requirements and streamline them into a single set of permit terms and conditions.

During interviews, when asked about streamlining, several permit writers responded that it is District policy to include only the most stringent limit and to eliminate others. Thus, it appears that the District is streamlining overlapping federal requirements for every permit without providing any evaluation of these actions. This is inconsistent with the written response by MDAQMD to EPA's preliminary questionnaire, which stated that each applicable requirement is given its own set of permit conditions to ensure that the permit includes all requirements. (See Appendix B.)

⁷ We have commented on the District's statements of basis in the past. We did so in a letter on the proposed title V permits for IMC Chemicals and Mobile Pipe Wrappers & Coaters, dated December 12, 2001. We also raised statement of basis issues in comments we sent via email on the proposed permits for six Southern California Gas compressor station permits (December 9, 2011), Unlimited Performance Products (January 5, 2012), and Blythe Energy (January 18, 2012).

⁸ White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, March 5, 1996.

After reviewing several permits, EPA found that the District has issued permits to some facilities that do not include all emission limits. As MDAQMD does not discuss streamlining in its statements of basis, EPA cannot determine if the District had streamlined applicable requirements. For illustrative purposes, here are some examples:

- **NO_x emission limits for combustion turbines** – The combustion turbines at Blythe Energy and High Desert Power Project are subject to NO_x emission limits from Prevention of Significant Deterioration (PSD) BACT determinations, NSPS Subpart GG, and local regulations. MDAQMD has included only one set of hourly, daily, and annual emission limits for NO_x in the title V permits for the turbines at these facilities. However, MDAQMD does not cite the origin of these limits in the permit or statement of basis. The District also does not include a streamlining analysis to demonstrate how the single set of permit conditions demonstrates compliance with the various NO_x emission limits that apply.
- **VOC emission limit at Victorville Landfill** – The landfill gas collection system at the County of San Bernardino Solid Waste Management Division’s Victorville Landfill is subject to NSPS Subpart WWW (Municipal Solid Waste Landfills) and NESHAP Subpart AAAA (Municipal Solid Waste Landfills). The permit contains only one condition limiting VOC emissions from the flare that controls the system. In the permit, MDAQMD does not cite the origin of this condition. In addition, the statement of basis does not state whether VOC emissions from the landfill gas collection system is also subject to NSR permit conditions or other local regulations or how the District selected the stated VOC emission limit.
- **PM emission limits at Riverside Cement Company’s cement kiln** – Riverside Cement Company operates a cement kiln controlled by a baghouse. Although this equipment is subject to NSPS Subpart F (Standards of Performance for Portland Cement Plants), NESHAP Subpart LLL (Portland Cement Manufacturing), and NSR permit conditions, MDAQMD has included only one emission limit for PM in the title V permit for the cement kiln at this facility. Again, the statement of basis does not explain how the District selected this emission limit.

We further note that permits for Mitsubishi Cement Corporation, CEMEX Construction Materials and Searles Valley Minerals contain the following language: “In the event of conflict between District permit conditions and these Federal requirements, the more stringent requirements shall govern.” There is no discussion in the statements of basis for these permits describing which requirements are more stringent.

In addition, MDAQMD includes provisions in several permits stating that equipment is subject to a California ATCM and, in the event of conflict between permit conditions and the ATCM, the requirements of the ATCM shall govern.⁹ The statement of basis does

⁹ We note that California ATCMs are not federally enforceable unless they are used to streamline multiple overlapping applicable requirements. EPA addressed the fact that some NSR permit conditions are not federally enforceable in the “White Paper for Streamlined Development of Part 70 Permit Applications,” July 10, 1995: “Likewise, the State will also need to identify provisions from NSR permits that are not required under Federal law because they are unrelated to the purposes of the NSR program. Examples typically include odor limitations, and

not discuss whether compliance with the ATCM guarantees compliance with the other permit conditions, including federally applicable requirements. Nor does it note that if compliance with a state- or local-only regulation is used to guarantee compliance with a federally applicable requirement, then permit conditions based on the state- or local-only regulation become federally enforceable.

Recommendation: MDAQMD must include all federally applicable requirements as conditions in title V permits. When multiple overlapping requirements apply to a facility, the District may write a streamlined set of conditions using the procedures outlined in White Paper #2. When utilizing the streamlining approach, the statement of basis must include a discussion with enough detail to demonstrate that compliance with permit conditions assures compliance with all applicable requirements. The statement of basis should note that when overlapping applicable requirements are streamlined and at least one of the streamlined requirements is federally enforceable, the resulting conditions must be treated as federally enforceable.

2.4 Finding: MDAQMD does not incorporate applicable requirements from federal regulations into title V permits in an enforceable manner.

Discussion: Title V of the CAA was established so that each major facility would have a single document containing all CAA requirements applicable to that facility and stating how the facility must comply with these requirements. To do this effectively, permitting authorities must incorporate applicable requirements into title V permits in sufficient detail that the public, facility owners and operators, and regulating agencies can clearly understand which requirements apply to the facility. These requirements include emission limits, operating limits, work practice standards, and monitoring, recordkeeping, and reporting provisions that must be enforceable as a practical matter.

Based on our review of the District's title V permits, MDAQMD appears to incorporate applicable requirements from the District's SIP-approved rules with the appropriate level of detail. However, MDAQMD incorporates requirements from federal regulations in an inconsistent manner which can result in enforceability issues. For discussion, we have grouped the approaches we noted in our review into four categories:

- **High level incorporation by reference** – In several permits, MDAQMD incorporates requirements from federal regulations by referencing them at such a high level that the permit does not specify what limits apply or how compliance is determined. The permit for Blythe Energy, for example, simply states that 40 C.F.R. Part 60, subpart GG (Standards of Performance for Stationary Gas Turbines) applies. There are no conditions, however, defining what limits or practices apply or how the facility will demonstrate compliance. Therefore, compliance with the permit conditions does not assure compliance with all

limitations on emissions of hazardous air pollutants where such limitations do not reflect a section 112 standard or a SIP criteria pollutant requirement. Where the State retains such conditions, it would draft the part 70 permit to specify that they are State-only conditions and incorporate them into the part 70 permit as such.” (p. 14)

applicable requirements and renders the permit shield ineffective. (See Finding 2.5.) It is possible that MDAQMD intended to streamline Subpart GG requirements into other more stringent requirements; however, the lack of any explanation in the statement of basis, means that the District's rationale for omitting substantive requirements is unclear.

- **Verbatim copy and paste** – In the permit for CEMEX Construction Materials, MDAQMD appears to have included, verbatim from the C.F.R., the entire text of 40 C.F.R. Part 63, Subpart LLL (Portland Cement Manufacturing Industry). By including the entire NESHAP, MDAQMD does not specifically identify which of several possible limits apply or which compliance methods the permittee will use. This technique does not assure compliance with the NESHAP.
- **Incomplete, selective inclusion** – Several permits for facilities subject to 40 C.F.R. Part 60, subpart OOO (Standards of Performance for Nonmetallic Mineral Processing Plants) follow high-level incorporation by reference with conditions stating the applicable opacity and particulate emission limits for each emission unit. MDAQMD does not, however, incorporate the compliance demonstration methods from the NSPS (i.e. testing, monitoring, recordkeeping, and reporting requirements) into the permit. This is a critical omission, as NSPS OOO requires a specific procedure for opacity testing.
- **Descriptive incorporation, not in the form of permit conditions** – MDAQMD permits sometimes include appendices that contain descriptions of applicable paragraphs from standards in 40 C.F.R. Part 60 or Part 63. Because the applicable requirements are not actually included in the permit as conditions, they are difficult to enforce. Descriptive references to federal regulations are more appropriate for the statement of basis. (See Finding 2.2.)

We found several instances where MDAQMD uses a combination of the methods already described. For example, in the permit for Searles Valley Minerals, MDAQMD includes a high level incorporation of 40 C.F.R. Part 60, subpart OOO and specifically identifies the opacity limit that applies to salt crushing and transporting equipment. NSPS Subpart OOO is also included in the permit in its entirety without any indication of which requirements apply to any emission units at the facility.

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

2.5 Finding: The broad permit shield provision that the District includes in every title V permit is ineffective because the District does not correctly include and identify applicable requirements in the permit.

Discussion: Part 70 allows permitting authorities to include in title V permits a provision, called the *permit shield*, stating that “compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that the applicable requirements are included and are specifically identified in the permit” (40 C.F.R. Part 70.6.(f)(1)(i)). Paragraph G of District Rule 1203 (Federal Operating Permits) contains very similar language. The District implements this shield provision by including the following boilerplate permit shield condition in every title V permit:

“Compliance with condition(s) contained in this Federal Operating Permit shall be deemed compliance with the Applicable Requirement underlying such condition(s). .. ”

As we discuss in Finding 2.4, MDAQMD incorporates requirements from federal regulations in an inconsistent manner with results that are generally not enforceable. Problems include high level incorporation by reference and verbatim copy and paste of regulatory text. In addition, the District frequently fails to include accurate references to applicable requirements, including those it has streamlined, in its citations of origin and authority. (See Findings 2.3 and 2.8.) The result of these practices is that MDAQMD title V permits do not meet the Part 70 and Rule 1203 requirement to include and identify each shielded applicable requirement, which means that the District’s broad shield provision is ineffective and does not provide the legal protection normally associated with permit shields.

Recommendation: To make its broad permit shield effective, MDAQMD must write its title V permits in a manner that ensures that compliance with all the terms and conditions of the permit assures compliance with all applicable requirements in the permit. For federal regulations such as NSPS and NESHAP, this means including and citing individual applicable requirements, down to the paragraph and subparagraph level of applicable subparts. The citations of origin and authority must provide complete regulatory references for the included applicable requirements, including those that have been subsumed under more stringent requirements as part of a streamlining exercise.

The District may also want to consider whether to continue its practice of including a broad permit shield provision in every title V permit, as opposed to a more case-by-case approach.

2.6 Finding: The District is not implementing the Compliance Assurance Monitoring rule.

Discussion: The CAM regulations, codified in 40 C.F.R. Part 64, applies to title V sources with large emission units that rely on add-on control devices to comply with applicable requirements. The underlying principle, as stated in the preamble, is “to

assure that the control measures, once installed or otherwise employed, are properly operated and maintained so that they do not deteriorate to the point where the owner or operator fails to remain in compliance with applicable requirements” (62 FR 54902, 10/22/97). Under the CAM approach, sources are responsible for proposing a CAM plan to the permitting authority that provides a reasonable assurance of compliance to provide a basis for certifying compliance with applicable requirements for pollutant-specific emission units (PSEU) with add-on control devices.

In interviews conducted during our site visit it was clear that many interviewees, including permit writers, need additional training on CAM requirements. At least one interviewee acknowledged that CAM was probably a deficiency in District permits.

EPA reviewed all 26 renewal applications the District provided us, and many of the title V permit renewals the District issued in 2009. Based on our review, we conclude that in most cases, applicants failed to address CAM in their applications,¹⁰ and the District failed to review title V renewal applications for CAM applicability, seek additional CAM information from applicants, or develop permit conditions for PSEUs subject to CAM. With one exception, the District did not address CAM applicability in any of the statements of basis we reviewed, including those for facilities that operate control devices that might be subject to CAM.¹¹ (See Finding 2.2 for additional discussion of statement of basis issues.) The District permit renewals we reviewed generally did not include any CAM requirements.¹²

Many title V facilities in the District operate control devices, and a CAM applicability analysis probably would have shown that in many cases, CAM applies to PSEUs and should have been addressed when the District renewed the permits. Examples include CEMEX and Mitsubishi Cement, which operate numerous baghouses; AGC Flat Glass North America, which operates baghouses, a scrubber, an electrostatic precipitator (ESP), and a selective catalytic reduction (SCR) unit; and Searles Valley Minerals Operations, which operates baghouses and an ESP. Other permitting authorities have found that it is common for these types of control devices (except SCR) to be subject to CAM.

¹⁰ The only renewal applications that EPA reviewed that addressed CAM were submitted by the Victorville Landfill, Specialty Minerals, the Coolwater Generating Station, and MCLLB Yermo Annex.

¹¹ The exception was the statement of basis for Blythe Energy, in which the District incorrectly stated that, “The facility is exempt from 40 C.F.R. Part 64 – Compliance Assurance Monitoring for NO_x because the facility is subject to the Acid Rain Program requirements (§64.2 (b)(1)(iii))...” In fact, while Part 64 does contain an exemption for acid rain emission limits, CAM still applies to, for example, NSR limits. In this case, however, the fact that the Blythe Energy permit requires a CEMS means that no additional monitoring is required.

¹² The exceptions we found were Ducommun AeroStructures and CalNev Pipeline. The Ducommun permit references CAM but does not actually contain any Part 64 requirements. (The permit requires “facilities that use non-compliant coating materials with compliance achieved through the operation of add-on emission control equipment” to “utilize Compliance Assurance Monitoring, as approved by the APCO, to meet administrative and equipment operational requirements.”) The Calnev permit has a CAM Plan in Part VII that was submitted by the applicant and that the permit states “was reviewed and deemed acceptable by the MDAQMD.” However, it is not clear that the components of the CAM plan are enforceable permit conditions. The Plan also fails to require that thermal oxidizer temperature below the indicator range of 1000 degrees F be recorded as a Part 64 excursion.

It is likely that some of these facilities, as well as others, are subject to CAM. The permits that MDAQMD issued to facilities subject to CAM should have contained CAM conditions written in accordance with §64.6(c). These conditions should have included:

- A requirement to monitor one or more control device operational parameters
- a definition of what constitutes an excursion from the indicator range(s) established for CAM
- a monitoring frequency that requires some data collection at least once in every 24-hour period
- a compliance certification condition that requires that annual compliance certifications “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” pursuant to §70.6(c)(5)(iii)

Recommendation: The District must ensure permit renewals for sources with emission units subject to CAM contain monitoring that satisfies the monitoring design criteria required by 40 C.F.R. 64.3. (See Finding 5.2 for additional discussion of the need to consider CAM applicability during the title V renewal and significant modification processes.)

In addition, the District should seek additional CAM training opportunities for staff, including the class offered by EPA’s Air Pollution Training Institute (APTI), and EPA guidance available online.¹³ (See Finding 7.2 for additional discussion of training needs.) The District may also want to develop CAM guidance for permit writers, which EPA could review upon request.

2.7 Finding: The reporting periods in the District’s annual compliance certification and semi-annual monitoring conditions are not clearly defined.

Discussion: The title V program requires that sources submit compliance certifications on an annual basis, and monitoring reports on a semi-annual basis. These on-going self-disclosure requirements increase sources’ awareness of their CAA compliance obligations, and provide permitting authorities with valuable information that can be used to improve inspections and resolve compliance problems.

The District includes several conditions in each title V permit to create the compliance certification and monitoring reporting requirements. These conditions include the following:

On an annual basis, of any given year, Owner/Operator shall submit a Compliance Certification Report, within 30 days of the anniversary of the date of the issuance or renewal of the Federal Operating Permit,

¹³ See <http://cfpub.epa.gov/oarweb/mkb/cam.cfm>

Owner/Operator shall submit, on a semi-annual basis, a Monitoring Report to the APCO/District, with a copy to the EPA Region IX Administrator.

Neither condition (or any other condition in District title V permits) defines the specific reporting periods covered by the submittals. In addition, the monitoring report condition does not provide any period of time at the end of a reporting period for sources to compile their reports before submitting them. These shortcomings could undermine the District's ability to enforce the compliance certification and monitoring report requirements in its title V program.

We also note that the District's practice of linking compliance certification reporting periods to the date of permit issuance or renewal could result in a gap in the period of time for which a source has to certify compliance if the permit is extended.¹⁴ As of July 2012, there are 10 extended title V permits in the District.

Recommendation: The District should revise its standard permit condition language to specify the specific periods of time that compliance certifications and monitoring reports cover, specify the amount of time following the end of the reporting period to compile the data, and specify a deadline by which the certifications and reports must be submitted to the District. For example, the District could require that compliance certifications be postmarked by January 30 of each year (or some other reasonable date) and cover the previous calendar year. Similarly, the District could require that the semi-annual monitoring reports cover the periods from January 1 to June 30 and from July 1 to December 31, and be postmarked by the 30th day following the end of the reporting period. The District must also ensure that there are no gaps in the periods for which a source must certify compliance if a permit is extended.

2.8 Finding: The District does not frequently cite the origin and authority of conditions in its title V permits.

Discussion: In conformance with 40 C.F.R. 70.6(a)(1)(i), subparagraph (D)(1)(b) of District Rule 1203 requires that all permits specify the origin of and authority for each term or condition so that the permit conditions would identify their underlying regulatory bases. Examples of origin and authority include NSR permit conditions, applicable federal regulations such as NSPS or NESHAP, or SIP-approved rules. During our file review, we found many instances where the District did not properly cite the origin and authority of permit conditions. Often, the District only cites to District Rule 204 and/or 40 C.F.R. 70.6(a)(3)(i)(B) instead of specific, underlying applicable requirements. District Rule 204 does not identify applicable requirements with which sources must comply, but merely establishes general authority for the District to impose permit conditions. Examples of the District's over-reliance on only Rule 204 [and 40 C.F.R. 70.6(a)(3)(i)(B)] can be found in permits issued to ACE Cogeneration Company (Permit

¹⁴ Title V permits are extended beyond the original five year term when sources submit a timely and complete renewal application, but the permitting authority has not yet issued a renewal permit.

No. 50001051, 11/16/10), Blythe Energy LLC (Permit No. 130202262, 6/4/12), and CEMEX California Cement LLC (Permit No. 100005 issued 3/7/09).

Likewise, the District's frequent citations to 40 C.F.R. 70.6(a)(3)(i)(B) are incorrect because the conditions are typically not periodic monitoring requirements that the District has added to fill monitoring gaps in the regulations. The District's pattern of citing periodic monitoring regulations for permit conditions that are not periodic monitoring requirements is confusing for permit reviewers, and does not satisfy the District's obligation to cite the origin and authority of each title V permit condition.

Recommendation: The District must correctly cite the applicable underlying requirements for all title V permit conditions by specifying their origins in federal and District regulations.

- 2.9 Finding:** MDAQMD does not have a consistent internal quality assurance process for reviewing permits before proposing them for public and EPA review.

Discussion: The District does not implement a consistent internal review process (involving supervisors, engineers, inspectors, and legal staff) before it proposes draft permits for public and EPA review. Based on staff interviews, it appears that internal review may be minimal (for some permits at least) because the District's review procedure is not clearly defined. Minimal review increases the possibility for inconsistencies and flaws in the District's title V permits.

Implementing a reliable and consistent internal review process would allow staff to develop title V expertise and to produce higher quality permits and statements of basis.

Recommendation: The District should implement a formalized and consistent internal review process for the development of its draft permits and statements of basis.

- 2.10 Finding:** The District adopted revisions to its title V regulations in 2005 that became effective prior to EPA's approval.

Discussion: EPA granted full approval to MDAQMD's title V operating permit program on December 7, 2001 (66 FR 63503). In 2005, the District adopted revisions to Rules 1201 (Definitions), 1203 (Federal Operating Permits), and 1205 (Modifications of Federal Operating Permits). These revisions added provisions to implement minor permit modifications and off-permit changes, in accordance with 40 C.F.R. 70.7(e)(2) and 70.4(b)(14)(i), respectively. An off-permit change is a change that a source may make without a permit revision, provided that the change meets certain criteria.

In order to revise title V programs that EPA has already approved, states must submit revised regulations to EPA and request approval as a title V program revision pursuant to 40 C.F.R. 70.4(i). In California, air districts submit their rule revisions to CARB, which in turn submits them to EPA and requests a title V program revision. The program

changes become effective upon approval by the Administrator (70.4(i)(2)(iv)). In the case of the 2005 MDAQMD title V rule revisions, neither EPA nor CARB had a record of CARB submitting these rule revisions to EPA as a title V program revision until CARB submitted the program revision in response to EPA's request on March 27, 2012.

During our file review, we found that every title V permit renewal we reviewed contained off-permit provisions from Rule 1203 in a section of the permit called "Operational Flexibility." EPA had not approved these revisions for inclusion in the District's EPA-approved title V program.

Recommendation: EPA and MDAQMD should work together so that revisions to the District's title V rules are submitted to EPA in a timely manner, and to assure that title V permits are processed according to the latest approved title V rules.

3. MONITORING

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

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

Title V permits must also include CAM provisions where CAM is required.¹⁵ In addition to periodic monitoring, permitting authorities are required to evaluate the applicability of CAM and include a CAM plan as appropriate. CAM applicability determinations are required either at permit renewal, or upon the submittal of an application for a significant title V permit revision. CAM requires a source to develop parametric monitoring for certain emission units with control devices, which may be in addition to any periodic monitoring, to assure compliance with applicable requirements.

3.1 Finding: MDAQMD does not include adequate periodic monitoring to assure compliance with particulate matter limits in its permits.

Discussion: District Rule 1203(D)(1)(c) and 40 CFR 70.6(a)(3)(i)(B) require the permitting authority to include in permits periodic monitoring, testing, or record keeping sufficient to determine compliance with an applicable requirement when the applicable requirement does not directly require such monitoring. Adding such periodic monitoring, testing, or record keeping provisions in permits is called *gap filling*. Gap filling may be necessary when an applicable requirement does not require any monitoring, requires only an initial compliance demonstration, or requires insufficient monitoring. To be effective, gap filling should specify a compliance method, a frequency for conducting monitoring, and criteria indicating non-compliance or triggering further investigation.

¹⁵ See 40 C.F.R. Part 64.

During our file review, EPA discovered several instances where MDAQMD failed to gap fill in cases where periodic monitoring for particulate matter (specifically, parametric monitoring of ESPs or baghouses) would be appropriate. Some examples include:

- The permit for Searles Valley Minerals identifies two soda ash production lines with particulate emissions from bleachers controlled by electrostatic precipitators (ESPs). The permit does not prescribe periodic monitoring of any ESP operating parameters.
- The permit for Searles Valley Minerals identifies several baghouses used for particulate control and states that pressure differential monitoring is required but does not specify a pressure differential range or monitoring frequency.
- The permit for AGC Glass identifies an ESP with a PM limit of 0.02 gr/dscf. Although the permit does identify target ranges of voltage and current for each ESP field, it does not specify a data collection frequency.
- The permit for AGC Glass requires numerous baghouses to operate at a pressure drop between 2 and 6 inches of water, but does not specify a data collection frequency.
- The permit for Mitsubishi Cement identifies numerous baghouses subject to PM limits. The permit requires differential pressure ranges supplied to the District upon request, but does not specify a monitoring frequency or pressure drop range.
- The permit for Coolwater Generating Station requires 98 percent PM control from an abrasive blasting system, but does not specify any monitoring to determine compliance with this standard.

Recommendation: When renewing or revising permits, the District must assess whether the monitoring, testing, and recordkeeping requirements for each emission unit are adequate to demonstrate compliance with each applicable requirement and gap fill if necessary. The District must discuss the adequacy of monitoring in its statements of basis and justify any gap filling it does.

3.2 Finding: The District does not include adequate periodic monitoring to assure compliance with opacity limits in its permits.

Discussion: The periodic monitoring for opacity in MDAQMD title V permits does not produce data that can be used to verify compliance, and does not fulfill the District's obligation to fill gaps in monitoring when an applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring.

All of the District's permits with baghouses and opacity limits that we reviewed contained requirements for sources to conduct visible emissions observations using EPA Method 22 at various frequencies, typically monthly or weekly. Method 22 observations are used to determine whether visual emissions are present, and are commonly used by permitting authorities as a gatekeeper to determine whether additional opacity monitoring, including Method 9 observations, is required. However, the Method 22 conditions in MDAQMD are typically not written in a way that triggers additional

monitoring if any visible emissions are observed (or if visible emissions observed by a Method 9-certified observer exceed a specified opacity percentage on an instantaneous basis).¹⁶ Some conditions requiring Method 22 observations do not mention Method 9 at all, while others require sources to conduct opacity observations “using USEPA Method 22, and USEPA Method 9 if necessary.” But the permits do not contain any explanation of what circumstances would require a Method 9 observation, which means that the Method 22 observations that the District requires do not serve any useful monitoring or compliance purpose.

In addition, MDAQMD title V permits do not require sources to conduct Method 9 observations on a regular basis, regardless of whether the observations are triggered by the detection of visible emissions during a Method 22 observation. EPA recommends that title V sources with opacity limits for emission units without a continuous opacity monitoring system (COMS) be required to conduct Method 9 observations on a regular basis. The frequency can vary from weekly to annually, depending on the size of the emission unit, the opacity limit, the level of maintenance required, the Method 22 requirements in the permit, and the emission unit’s typical margin of compliance.¹⁷ EPA was not able to document any instances of a MDAQMD title V permit requiring Method 9 observations as periodic monitoring.

The result of these permitting practices in MDAQMD is that major sources in MDAQMD’s jurisdiction, including three cement plants, two mineral processing plants, and a glass plant that have many emissions units that use baghouses to control particulate emissions are never required to determine and record their opacity levels at emission units that do not have COMS, and have no data on which to certify compliance with opacity limits in annual compliance certifications.

Recommendation: As the District renews and revises title V permits, it must require Method 9 observations on a regular basis for emission units without COMS to verify compliance with opacity limits. To the extent that the District chooses to require Method 22 observations as part of its approach to periodic monitoring for opacity, MDAQMD must add practically enforceable conditions to its permits that require additional actions on the part of permittees (which could include corrective action and Method 9 observations) if a Method 22 observation detects opacity.

¹⁶ One notable exception is the Cemex title V permit renewal, issued on March 17, 2009. For one large baghouse (129,470 cfm), the permit requires daily 6-minute Method 22 observations, corrective action if visible emissions are observed, and another Method 22 observation following corrective action that triggers a Method 9 observation if visible emissions are detected again.

¹⁷ The 1999 guidance document developed by EPA, CARB, and CAPCOA to provide periodic monitoring recommendations for generally applicable SIP emission limits recommends a monitoring frequency that ranges from weekly to annually for material handling units controlled by baghouses, depending on the uncontrolled potential to emit of the emission unit.

3.3 Finding: The District does not consistently include 40 C.F.R. Part 60 requirements for continuous emissions monitoring system (CEMS) performance specifications and quality assurance procedures in their title V permits.

Discussion: Sources that operate CEMS must meet certain performance specifications and quality assurance procedures, which are set forth in Appendices B and F of 40 C.F.R. Part 60. Appendix B ensures that CEMS are designed and installed properly, and Appendix F ensures the production of quality data for use in compliance determinations. During our file review, we found many permits that require CEMS, but do not consistently require performance specifications and quality assurance procedures. During our file review, we found four permits that required compliance with both Appendices B and F.¹⁸ However, five other permits required compliance with Appendix B, but not with Appendix F.¹⁹ Without both performance specifications and quality assurance procedures, the permits are incomplete.

Recommendation: The District must consistently include the CEMS performance specifications and quality assurance procedures in 40 C.F.R. Part 60, appendices B and F, in all new or revised permits that require CEMS.

¹⁸ CEMEX California Cement LLC, Permit No. 100005 issued 3/7/09; Coolwater Generating Station, Permit No. 104801880 issued 06/28/09; Mitsubishi Cement, Permit No. 11800001 issued 03/25/09; and Riverside Cement, Permit No. 1200003 issued on 03/17/04.

¹⁹ ACE Cogeneration Company, Permit No. 50001051 (NSPS Subpart Da CEMS applicability) issued 11/16/10; AGC Flat Glass, Permit No. 027000935 issued 03/17/09 (Part 60 CEMS requirement); Blythe Energy LLC, Permit No. 130202262 (NSPS Subpart GG and Acid Rain applicability) issued 6/4/12; High Desert Power Project, Permit No. 104701849 (NSPS Subpart GG and Acid Rain applicability) issued 09/18/11; SEGS VIII and IX, Permit No. 060300975 (Part 60 CEMS requirement) issued 10/16/10.

4. PUBLIC PARTICIPATION AND AFFECTED STATE REVIEW

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

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

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

4.1 Finding: The District does not inform the public of the right to petition the EPA Administrator to object to a proposed title V permit.

Discussion: MDAQMD's EPA-approved title V program provides that any member of the public may petition EPA to object to a title V permit on any issue raised during the public comment period for the permit. (See MDAQMD Rule 1209(B)). The petition must be submitted to EPA within 60 days of the end of the Agency's 45-day review period.²⁰ While the District rule does not require that permitting agency actively notify

²⁰ The exception is when the petitioner demonstrates that it was impractical to raise such objections during the comment period.

the public of its ability to petition EPA, we believe that it is good practice to inform the public of the petition process. We note that, to date, the public has not raised this issue.

Recommendation: MDAQMD should add text to its public notices notifying the public of the EPA petition process and its associated timing.

4.2 Finding: MDAQMD's title V public notification process does not address the area's changing demographics.

Discussion: Many interviewees were not familiar with the changing demographics of their jurisdiction. Some staff were aware of the overall increase in the Hispanic population in the area and expressed concern that the District's notification efforts have not been adjusted to address this growing community.

To evaluate the changing demographics in MDAQMD's jurisdiction, EPA compared demographic data from the 2000 census in the area to 2010 census data in the same area and prepared a map that depicts the growth of the Hispanic population. (See Appendix E.) Overall, the Hispanic population increased 203% from 2000 to 2010.

EPA notes that the demographic analysis above is only illustrative of the Hispanic population in the MDAQMD – other populations may have experienced similar growth. The District is not identifying non-English speaking communities that may be impacted by emissions from title V sources, and is therefore may be missing the opportunity to notify these communities in their own language.

Recommendation: EPA recommends that MDAQMD improve its public notification process by implementing a translation program for communities that have experienced significant growth so that the public has a better understanding of how emissions from title V sources may be affecting their communities. To determine overall translation needs, the District should review the demographics of the communities that MDAQMD serves.

4.3 Finding: The District has never received any comments from the general public on proposed title V permits.

Discussion: During our interviews and file reviews, we did not find evidence of any public comments on MDAQMD's proposed title V permits. However, we did find that facilities provided comments on their permits. The fact that the public has not commented on any of the District's title V permits may be the result of the public generally not being interested in the title V permitting process, and/or the District not using effective means to notify the public of specific title V permits.

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

Based on our own experience with the EPA Region 9 website as well as what we have seen on websites of other permitting authorities, we have found it useful to post both proposed and final title V permits, the statement of basis, the public notice itself, and the response to public comments. For example, public notices placed on the District website would probably reach additional audiences when compared to an approach where notices appear solely in newspapers. In addition, providing additional content on the District website regarding the title V program and public notifications, preparing flyers for distribution to community members, and conducting public workshops may also improve public understanding of the District's title V program. It is also useful to include information such as deadlines for public comment, a contact person for each permitting action, and issuance date of the final permit. Other examples of general permitting information which would be useful to the public and that MDAQMD should consider posting include general title V information (such as a Citizens' Guide to Title V) and citizen petition procedures.

Recommendation: MDAQMD should review its title V public notifications process by exploring ways to improve the effectiveness of the District's outreach and to provide the public with an increased opportunity to provide input on proposed title V permits. For two good examples of other agencies' websites, the District may also want to review the websites of the Bay Area Air Quality Management District and the Arizona Department of Environmental Quality, which EPA believes are good examples of using the internet to disseminate title V information to the public.²¹ (See also finding 4.2.)

4.4 Finding: It is unclear whether MDAQMD consistently notifies "affected states" when the District proposes title V permits.²²

Discussion: MDAQMD's EPA-approved title V program (Rule 1207(B)) requires the APCO to notify affected states when a permit is proposed for public comment. In our file review, we found that the District generally notifies affected states based on a mailing list, although it is possible that the District effort is incomplete because of omissions in the mailing list. For example, we were not able to document instances in which the District notified the SCAQMD of proposed permits for facilities in counties in which the District shares jurisdiction with SCAQMD (Riverside and San Bernardino). During our interviews, MDAQMD's staff did not identify a consistent process to ensure that affected states are notified.

Recommendation: EPA encourages MDAQMD to develop a policy or guidance document and a database that allows for the routine notification of affected states of proposed title V permits, and document this notification in the administrative record for

²¹ See <http://www.baaqmd.gov/Divisions/Engineering/Public-Notices-on-Permits.aspx> and <http://www.azdeq.gov/environ/air/permits/index.html>.

²² Affected state is defined in District Rule 1201 as "Any state whose air quality may be affected by the granting of title V permit to a facility and is contiguous to the District, or any state which is located within 50 miles of the facility." The term "state is defined in 40 C.F.R. 70.2 as "any non-Federal permitting authority, including any local agency, interstate association, or statewide program...."

the permit. The use of mailing lists based on facility location would ensure that affected states are notified.

5. PERMIT ISSUANCE / REVISION / RENEWAL

This section focuses on the permitting authority's progress in issuing initial title V permits and the District's ability to issue timely permit renewals and revisions consistent with the regulatory requirements for permit processing and issuance. Part 70 sets deadlines for permitting authorities to issue all initial title V permits. EPA, as an oversight agency, is charged with ensuring that these deadlines are met as well as ensuring that permits are issued consistent with title V requirements. Part 70 describes the required title V program procedures for permit issuance, revision, and renewal of title V permits. Specifically, 40 C.F.R. 70.7 requires that a permitting authority take final action on each permit application within 18 months after receipt of a complete permit application, except that action must be taken on an application for a minor modification within 90 days after receipt of a complete permit application.²³

5.1 Finding: MDAQMD has issued many title V permit renewals, but has a backlog of overdue renewals.

Discussion: The District has 36 active title V sources, and has renewed 26 title V permits at least one time. MDAQMD has generally made good progress in issuing renewals, and was especially active in 2009, issuing several renewals that year. However, the District is currently experiencing a backlog of permit renewal applications, including applications from sources whose title V permits have expired.²⁴ As of July 2012, there are 10 extended permits in the District, 7 of which should have been renewed more than two years ago.

Part 70 and the District's EPA-approved Rule 1203 (Federal Operating Permits) require the District to make a final determination to issue or deny a permit renewal within 18 months of receipt of a timely and complete application. In its response to our title V questionnaire, MDAQMD stated that delays in issuance of permit renewals is "primarily due to state diesel IC engine ATCM language and our parallel permitting process." Incorporation of state only air quality requirements, such as air toxic control measures, should not be the cause for delays of title V permit renewals unless the District finds that it will enhance the title V permit. We also note that such state requirements should be marked as District enforceable only. In addition, it is not clear to EPA how the District's parallel permitting process, in which the District processes a source's NSR and title V permits simultaneously, could result in the delay in issuance of title V permit renewals. If, in some cases the District needs additional time to process an NSR permit application, the District should proceed with title V permit issuance. Depending on the nature and timing of the NSR action, the District could reopen the title V permit to add new NSR conditions that are created in the NSR permit (if there are 3 or more years remaining on

²³ See 40 C.F.R. 70.7(a)(2) and 70.7(e)(2)(iv).

²⁴ When a title V source submits a timely and complete renewal application, the terms of its current permit remain in effect even if the five year permit term of the permit expires before the permitting authority has issued a renewal. EPA refers to such permits as "extended" permits.

the title V permit term), or add the new NSR requirement the next time the title V permit is revised or renewed.

Recommendation: MDAQMD should develop a plan for preventing growth of the title V renewal application backlog and eliminating the current backlog. The District should not delay permit renewal issuance to address state permitting requirements unrelated to title V.

5.2 Finding: The District has renewed title V permits for sources that operate control devices without considering the applicability of the CAM rule.

Discussion: During our file review, we discovered that the District received applications from facilities with emissions units that are potentially subject to Part 64, or probably subject, that did not address CAM applicability, or identify Part 64 as an applicable requirement and propose CAM plans. Yet the District renewed the permits without considering CAM applicability or notifying the sources of this deficiency in their applications. (See Finding 2.6 for additional discussion of the CAM rule.) Examples include:

- Searles Valley Minerals - The facility operates several control devices (baghouses, ESP, vapor recovery), yet its 2006 renewal application was silent on CAM applicability. The District did not address CAM in the title V permit renewal or statement of basis.
- CEMEX - The facility operates many baghouses. Its 2008 application did not contain District application forms, and consisted only of a copy of its existing permit with underline/strikeout text showing requested changes. The renewal permit, issued in 2009, does not contain CAM requirements. We were not able to locate a copy of the statement of basis associated with that renewal. (See Finding 7.3 for additional discussion of MDAQMD's storage of electronic and physical files.)
- Specialty Minerals - The source's 2010 application does not attempt to determine CAM applicability on an emission unit basis, as required by Part 64. Instead, the source states that it evaluated the all control device monitoring conditions in the title V permit and concluded that they satisfy CAM, and states that, "Therefore no additional analysis was required to determine CAM applicability, as all units that are potentially subject to CAM meet the CAM requirements regardless of whether or not CAM applies to the unit based on pre-control emissions." In addition to not definitively addressing CAM applicability for all emission units with control devices, this analysis is flawed in several respects. The permit does not identify any operational parameters and associated indicator ranges, as Part 64 requires, and does not satisfy the minimum Part 64 monitoring frequency requirement of data collection at least once every 24 hours. Despite this, the District apparently concurred with the source's analysis.

Recommendation: MDAQMD must evaluate CAM applicability for each control device at title V facilities, and document its determinations in statements of basis, during the title V renewal and significant modification processes. To do this, the District must develop a plan to identify which facilities have PSEUs subject to CAM, and add conditions that satisfy Part 64 to these permits in a timely and efficient fashion (when permits are revised or renewed). One way to begin this process would be to send letters to all title V sources in the District, requesting the submittal of CAM applicability analyses, and CAM plans if CAM is applicable, by specified deadlines.

When implementing its plan, the District must ensure that it addresses CAM applicability for all emission units at each source in statements of basis for permit renewals and significant permit revisions.

5.3 Finding: The District has not issued any significant permit modifications in the history of its title V program.

Discussion: Under title V permit minor modification procedures, sources may make changes before their title V permits are revised, provided that the changes meet the minor permit revision criteria established in the regulations. Any modification that does not meet one or more of the minor permit modification “gatekeepers” must be processed as a significant minor permit modification (or an administrative amendment, if applicable).²⁵ In addition, public notice is required for significant modifications but not minor modifications.

The District has been implementing its title V program since EPA granted interim approval of the program in 1996. We have been unable to identify any significant permit modifications that the District has processed in the intervening 16 years.²⁶ Although EPA’s ability to review MDAQMD title V permit modifications for this program evaluation was limited due to the absence of hard copy files at the District office (See Finding 7.3 for more detail on this issue.), in its response to our title V questionnaire, MDAQMD stated that, “The District has not received an application for a modification which would be considered significant.”

In a title V program with almost 40 sources, we find it unusual that a source has never applied for a significant modification, and that the District has never determined that an

²⁵ By “gatekeepers”, we mean the criteria specified in Part 70 and state title V programs that must be satisfied in order for a modification to be processed as a minor modification. Examples include changes that “do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit,” or “are not modifications under any provision of title I of the Act” (i.e., a major modification under the NSR program). See 70.7(e)(2)(i). We also note that during our evaluation of the MDAQMD title V program, we discovered that the District revised the minor modification and off-permit provisions of its title V regulations in 2005; however, these revised regulations were not submitted to EPA as a title V program revision until March 27, 2012. We are currently reviewing them and will propose a title V program revision in the near future.

²⁶ The District proposed a significant modification of the ACE Cogeneration permit on May 16, 2012, but as of July 10, 2012, has not issued the final permit.

application for a minor modification actually must be processed as a significant modification. This may indicate a lack of clarity among both District staff and the regulated community about the distinctions between the minor and significant title V permit modification procedures. We note that the creation of BACT emission limits in District NSR permits may constitute a “case-by-case determination of an emission limit or other standard,” which is a Part 70 criterion that disqualifies a permit modification from being processed as a minor modification. It is possible that at least some of the concurrent NSR and minor title V permit modification actions in which the District has established BACT limits should have been processed as significant modifications.

MDAQMD implements a parallel permitting process in which local NSR and title V permitting actions for facilities are typically processed simultaneously.²⁷ In these actions, the District should evaluate public notice requirements for both NSR and title V, including determining whether any of the title V minor modification “gatekeepers” prohibit an action from being processed as a title V minor modification, i.e., without public notice, even if public notice is not required under the District’s NSR program.

Recommendation: MDAQMD should review applications for title V permit modifications carefully to determine whether or not they qualify to be processed as minor modifications. The District must provide public notice for significant modifications.

5.4 Finding: MDAQMD may take longer than 90 days to process minor modifications.

Discussion: Part 70 requires permitting authorities to take final action on permit applications for minor modifications within 90 days of receipt.²⁸ In its response to EPA’s title V questionnaire, the District stated that minor modifications “are not done separately from the local permitting process,” and that its best estimate of its minor permit processing time is 120 days, which is affected by “whether offsetting emissions reductions are required; and whether another agency such as the California Energy Commission, a land use agency, California Regional Water Control Board needs to issue a permit modification.”

Recommendation: The District should work to reduce the time it takes to process minor modifications to 90 days or less.

²⁷ Under this option, often referred to as “enhanced NSR,” NSR permit modifications are subject to the procedural requirements of Part 70, including a 45-day EPA review period and a 60-day petition period that allows citizens to petition the Administrator to object to permit issuance. After the NSR permit has been issued, and the project has been completed, the permitting authority revises the title V permit to add (or delete) the new or revised NSR conditions via an administrative amendment. The benefits of consolidating the NSR and title V permitting processes include reduced permit processing time and the opportunity for EPA to review and concur with NSR permit changes. EPA has provided guidance on enhanced NSR in the White Paper for Streamlined Development of Part 70 Permit Applications, July 10, 1995; an 11/7/95 letter from Lydia Wegman, OAQPS, to William Becker, STAPPA/ALAPCO; and the title V Implementation Q & A, Region 9, December 1995.

²⁸ Part 70 gives permitting authorities the option of allowing sources to make requested changes immediately after submitting an application, provided that sources comply with both its own proposed permit changes and the applicable requirements governing the change. See §70.7(e)(2)(v).

6. COMPLIANCE

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

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

6.1 Finding: MDAQMD reviews all reports submitted by title V sources and uses the information to initiate compliance actions.

Discussion: Part 70 requires permitted sources to submit annual compliance certifications, semiannual reports of required monitoring, and prompt reports of permit deviations. Permitting authorities use the submitted reports as a tool to help determine compliance with permit conditions.

During interviews, MDAQMD staff reported that one MDAQMD employee reviews all required reports and that these reports were the basis for compliance actions, including notices of violation (NOVs). They estimated that perhaps 40 percent of deviation reports resulted in a NOV. Compliance staff asserted that these reports helped both the District and permitted sources understand compliance issues. EPA did not review any deviation reports or NOVs.

Recommendation: MDAQMD should continue reviewing all required title V reports and take enforcement action when necessary. In addition, MDAQMD may want to explore having additional staff members review the title V reports.

6.2 Finding: MDAQMD generally does not use title V permits as a basis for performing on-site inspections.

Discussion: According to EPA's 2010 *Clean Air Act Stationary Source Compliance Monitoring Strategy*, EPA recommends that permitting authorities perform Full Compliance Evaluations (FCEs) for most title V sources at least every other year.²⁹ For the vast majority of title V sources, EPA expects that the permitting authority will need to perform an on-site inspection to determine the facility's compliance status as part of the FCE.

²⁹ This document available at: <http://www.epa.gov/compliance/resources/policies/monitoring/caa/cmsspolicy.pdf>

During interviews, MDAQMD's compliance staff reported that they use local operating permits, not title V permits, as the basis for performing compliance inspections. Local operating permits generally do not include all permit content required by part 70 or all federally applicable requirements, such as NSPS, NESHAP, or CAM requirements. Therefore, EPA recommends that the District use title V permits as the basis for determining compliance for FCEs.

Recommendation: EPA recommends that the District perform an FCE at least every other year and use the title V permits as the basis for performing inspections for FCEs to ensure that all applicable requirements are reviewed.

6.3 Finding: MDAQMD does not perform unannounced inspections of title V sources.

Discussion: During interviews, air quality specialists (inspectors) reported that the District does not perform unannounced inspections of title V sources unless it is responding to a complaint from the public.

EPA recognizes that inspectors may need to make arrangements in advance when inspecting facilities because they will likely need cooperation with facility staff for a significant period of time (to guide inspectors safely through the facility, retrieve paperwork for review, explain how required monitoring is performed and recorded, etc.). EPA, however, conducts mostly unannounced inspections and believes that unannounced inspections allow inspectors to observe the facility and examine ongoing recordkeeping at times when operators are not expecting regulators to be present. This can give a broader view of the facility's compliance status.

Recommendation: EPA recommends that MDAQMD perform unannounced inspections when possible to ensure that facility staff implement title V requirements at all times.

7. RESOURCES AND INTERNAL MANAGEMENT

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

An important part of each permitting authority's title V program is to ensure that the permit program has the resources necessary to develop and administer the program effectively. In particular, a key requirement of the permit program is that the permitting authority establish an adequate fee program. Part 70 requires that permit programs ensure that title V fees are adequate to cover title V permit program costs and are used solely to cover the permit program costs.³⁰ Regulations concerning the fee program and the appropriate criteria for determining the adequacy of such programs are set forth in 40 C.F.R. 70.9.

7.1 Finding: The District does not account for how the title V fees it collects are used to implement the title V program.

Discussion: The title V (Part 70) regulations require that permit programs ensure that title V fees that are collected are adequate to cover title V permit program costs and are used solely to cover the permit program costs.

It appears that MDAQMD is able to accurately account for title V revenues because the revenues MDAQMD receives from title V permit fees and non-title V permit fees are identified in separate line items in the District budget. However, MDAQMD's accounting system does not track title V expenses separately from non-title V expenses. During our evaluation, we asked MDAQMD to demonstrate that the fees collected during the five year period ending in FY 2011 (July 2007 through June 2011) were spent on title V expenses. In each of the five years requested, MDAQMD was unable to reconcile title V expenses with title V fee revenue. Because MDAQMD cannot accurately account for title V expenses, it is difficult to determine whether title V revenues cover its title V expenses every year or whether title V revenues are used for non-title V purposes.

Recommendation: MDAQMD must accurately track how title V revenues are being used to cover title V program costs. The District must: 1) identify those activities associated with the title V program and materials to implement the program; 2) implement a more rigorous timekeeping policy with respect to the labor costs of their title V program; 3) better track additional associated expenses such as those described in the District's initial title V program submittal (submitted in 1995). In addition, the District may want to consider placing the title V fees and non-title V fees in separate accounts.

³⁰ See 40 C.F.R. 70.9(a).

7.2 Finding: MDAQMD does not have a structured title V training program.

Discussion: As noted elsewhere in this report, MDAQMD title V permitting staff are relatively new to the title V program. In addition, we identify several substantive issues related to permit preparation and content indicating a need for further title V training in order to prepare more effective permits. (See Chapter 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. MDAQMD permit writers specifically suggested training on federal regulations, e.g. NESHAP and NSPS, would improve staff's familiarity with regulatory requirements and help permit writers identify how best to incorporate these requirements into title V permits. EPA has separately identified training needs related to CAM and other critical program elements and policies in Chapter 2. See Findings 2.1 and 2.6.

Recommendation: MDAQMD should identify core training needs and develop a curriculum that title V permit writers should complete to enhance title V program understanding and improve permit writing.

EPA recommends that MDAQMD permit writers review the training documents cited in the Recommendations for Findings 2.1 and 2.4. In addition, in other title V program evaluations, EPA has found good examples of the type of training and curriculum that the MDAQMD may find most useful.³¹

Additionally, MDAQMD should encourage staff to network with staff from other agencies by allowing them to participate in other learning opportunities such as conferences and other meetings.

7.3 Finding: The District has implemented a document imaging system to store records electronically. However, the District's document management system (both its archive of physical files off-site and the document imaging system) needs improvement to address difficulties in document accessibility.

Discussion: The District has contracted with a private firm (Questys Solutions) to develop and implement a customized electronic document storage database. The District scans documents into the database including title V related documents such as: permits, permit applications, statements of basis, correspondence, and inspection reports. The hard copy documents are then archived off-site.

The database has report generation and search capabilities for document retrieval. Only a few District employees, however, have access to the more advanced database client

³¹ For example, see Finding 7.4 on pages 33 and 34 of EPA's "Bay Area Air Quality Management District title V Operating Permit Program Evaluation Final Report September 29, 2009", which is available on EPA's website at <http://www.epa.gov/region09/air/permit/titlevevals.html>.

capable of performing more sophisticated queries. In addition, some interviewees expressed frustration with their ability to find documents quickly and easily, possibly because of inaccurate document indexing, a lack of expertise with a non-intuitive interface, or a combination of the two.

One of the advantages of having a document imaging system is that the District is often able to quickly supply requested documents to people that request them either as hard copies or in an electronic format.

As part of our information gathering, EPA requested the most recent title V renewal applications for all title V sources, all compliance documents for a subset of four facilities, and all synthetic minor permits in MDAQMD (along with the public notice documents related to the PTOs that made them non-major). Unfortunately MDAQMD was unable to provide renewal applications for one quarter of their title V sources in a timely manner. The district could not obtain these documents in the Questys system and, because they are archived off site, could not quickly obtain hard copies.

Recommendation: EPA acknowledges MDAQMD's efforts to move toward a paperless environment. To enhance its document management system, MDAQMD should institute a quality assurance/quality control process to verify that information is accurately and consistently entered into Questys, and should ensure that all employees are well versed in using the system to the capacity necessary for their job functions.

Furthermore, EPA recommends that the District maintain hard copies on site of the most recent and most important documents, e.g. all current title V permits and the associated applications, the most recent inspection reports, and compliance evaluations.

8. TITLE V BENEFITS

In the title V program evaluation reports that EPA Region 9 has issued in the past, we have used Chapter 8 to describe how the permitting authority's existing air permitting and compliance programs have benefited from the administration of the permitting authority's title V program. The title V permit program is intended to generally clarify which requirements apply to a source and enhance compliance with any CAA requirements, such as NSPS or SIP requirements. Our findings in this chapter usually focus on reviewing how the permitting authority's air permitting program changed as a result of title V, resulted in transparency of the permitting process, improved records management and compliance, and encouraged sources to pursue pollution prevention efforts. However, based on our review of MDAQMD title V permits (and statements of basis) and staff interviews, we believe that the District is missing opportunities to benefit from the title V program. In our findings in Chapters 2-7, we document several areas in which the District must improve its program implementation, including permit content, statements of basis, compliance, and fee documentation. While we believe that MDAQMD's title V program complies with the requirements of Part 70, we find that the District's implementation of the program is lacking in a number of areas. We believe that this is a direct result of the District's focus on its local permitting program instead of the title V program.

This focus on the local permitting program has resulted in flawed title V implementation, which prevents the District from realizing the benefits of the program to the same extent that other permitting authorities do. We believe that the District, and the public and regulated community within MDAQMD's jurisdiction, are missing many opportunities to benefit from the title V program. These missed opportunities include:

- Comprehensive permits: Title V permits should be a tool for the public to understand stationary sources' CAA obligations. In this report, we have identified several problematic areas in MDAQMD's title V permit content, including not consistently incorporating applicable requirements from federal regulations into title V permits in a comprehensible and enforceable manner (Finding 2.4), failure to implement the Compliance Assurance Monitoring rule (Finding 2.6), and inaccurate citation of the origin and authority of title V permit conditions to clearly identify the underlying applicable requirements (Finding 2.8). At present, MDAQMD title V permits do not accurately compile all CAA requirements for a particular facility into one document, which is one of the primary goals of the title V program.
- Improved quality of inspections: The District tends to rely on the local operating permit for compliance purposes. As a result, inspectors do not use title V permits as a basis for performing on-site inspections (Finding 6.2). While many permitting authorities have used title V to improve the effectiveness of their field enforcement programs, MDAQMD has not done so and may be missing

opportunities to identify instances of noncompliance and bring sources back into compliance.

- Transparency in the title V permitting process: Well-written statements of basis help promote transparency in the title V permitting process by documenting the source's compliance history, and the rationale for the permitting authority's determinations on applicability, monitoring, and other significant decisions made during the title V permitting process. Any determination documented in the statement of basis helps the regulated community, EPA, the public, and future permit writers understand what requirements apply to sources, and the basis for determinations the District has made. MDAQMD's failure to produce adequate statements of basis (Findings 2.2 and 2.3) to support its title V permit decisions has reduced the transparency of its title V permitting process. In addition, the fact that MDAQMD's title V public notification process does not address the area's changing demographics (Finding 4.2) means that communities that have experienced significant growth have been underserved, and may not be aware of opportunities to participate in decisions about the regulation of emissions from title V sources.

GLOSSARY OF ACRONYMS & ABBREVIATIONS

Act	Clean Air Act [42 U.S.C. Section 7401 et seq.]
Agency	U.S. Environmental Protection Agency
APTI	Air Pollution Training Institute
ATC	Authority to Construct
MDAQMD	Bay Area Air Quality Management District
CAA	Clean Air Act [42 U.S.C. Section 7401 et seq.]
CAM	Compliance Assurance Monitoring
CAPCOA	California Air Pollution Control Officers Association
CARB	California Air Resources Board
CEMS	Continuous Emissions Monitoring System
COMS	Continuous Opacity Monitoring System
C.F.R.	Code of Federal Regulations
District	Bay Area Air Quality Management District
ESP	Electrostatic Precipitator
EPA	U.S. Environmental Protection Agency
HQ	Headquarters
NESHAP	National Emission Standards for Hazardous Air Pollutants, 40 C.F.R. Parts 61 & 63
NOV	Notice of Violation
NO _x	Nitrogen Oxides
NSPS	New Source Performance Standards, 40 C.F.R. Part 60
NSR	New Source Review
OIG	EPA Office of Inspector General
PM	Particulate Matter
PM ₁₀	Particulate Matter less than 10 microns in diameter
PTO	Permit to Operate (local, not title V)
PSD	Prevention of Significant Deterioration
SCR	Selective Catalytic Reduction
SIP	State Implementation Plan

APPENDICES

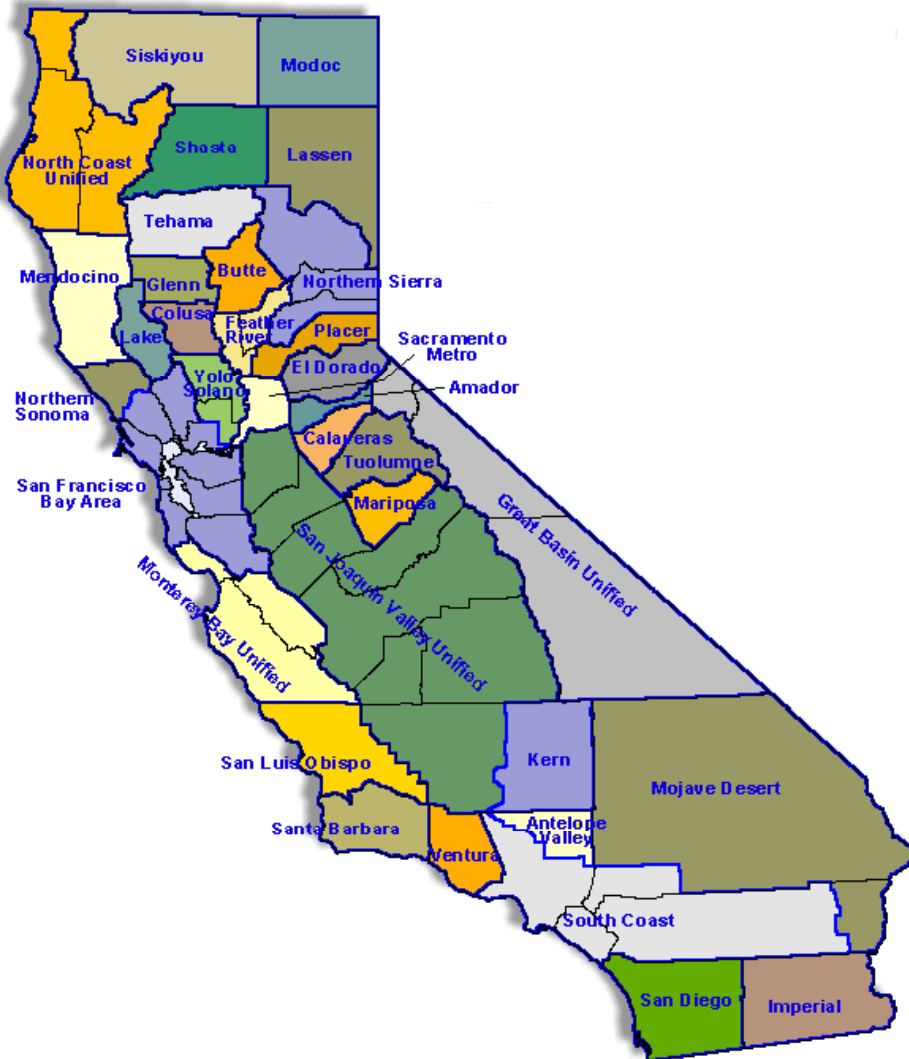
Appendix A

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.

California Air Districts



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

The Board is one of six boards, departments, and offices under the umbrella of the California Environmental Protection Agency.
Cal/EPA | ARB | CIWMB | DPR | DTSC | OEHHA | SWRCB

Appendix B

TITLE V QUESTIONNAIRE AND MDAQMD RESPONSES

EPA

Title V Program Evaluation

Questionnaire

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- H. Title V Benefits

A. Title V Permit Preparation and Content

- Y N
1. For those title V sources with an application on file, do you require the sources¹ 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?

Not necessarily. This is due to the fact that we have a bifurcated Title V program where the local permits are completely separate (although they are included as a part of the Title V permit). Because we have a parallel local permitting process which has a yearly update cycle and separate applications we can deem any new state level applications or changes to local permits as part of the Title V application. So long as the local permits are current and reflect all applicable requirements, we do not require the application to be updated.

- Y N
- a. Do you require a new compliance certification?

Compliance certifications are required with every submission from a Title V facility.

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

As this question only applies to an existing facility, the local permit program includes compliance inspection, reporting and enforcement on an annual or more frequent basis. Due to the large SIP gap local permits often include substantive federal requirements and in some cases may be more stringent than the applicable federal requirement. Thus, if a facility is in compliance with its local permits it may be presumed to be in compliance with the federal requirements.

- a. In cases where a facility is either known to be out of compliance, or may be out of compliance (based on pending NOV's, a history of multiple NOV's, 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.

No facilities within the MDAQMD have been out of compliance or potentially out of compliance at the time the Title V permit has been issued. However, in AVAQMD there is one facility where

¹ The MDAQMD uses the term "facility" to refer to equipment /groups of equipment on contiguous property under common control. This is to avoid confusion with use of the word "source" which has been used to refer to not only a grouping of emissions units but also a single emitting piece of equipment or a single emissions point.

there is a compliance problem caused in part by the creation of the district and the resulting SIP gap. We are delaying issuance of a Title V permit until the modification of the applicable SIP element is complete.

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

Timing has improved through increased familiarity with the program and better integration of the local permits with the Title V permits. We have found that dedicated Title V permitting staff was a mistake given our parallel local permitting program.

Y ■ N □

4. Do you have a process for quality assuring your permits before issuance? Please explain.

We have the applicant review a preliminary draft permit as well as multiple staff level review.

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

We have a standardized format for our Title V permits with a variety of standard conditions to cover general applicable requirements that are common to most, if not all, facilities. However, each applicable requirement has a separate permit condition and is listed separately regardless of the overlapping nature of the requirement.

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

Not applicable.

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

Due to the propensity for applicable requirements to have slightly different provisions (for example: different reporting periods, methodologies, or metrics) we prefer to list all requirements so that the facility does not inadvertently end up out of compliance with one requirement in the process of complying with another similar requirement. However, we do encourage facilities to identify and prove compliance with multiple requirements using a single test, measurement or report whenever possible. For example: Submission of proof of compliance with the lowest of a set of similar emissions requirement will suffice to show compliance with all the higher emissions limits.

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?

The District Title V permit structure is designed to integrate with the existing parallel local permits. Due to the ever changing SIP gap as well as the overemphasis on technicality as set forth in the federal regulations most of our Title V permits are lengthy and cumbersome. In general, most of our Title V facilities use the local permits as the basis for their day to day operations.

7. How has 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.

Very little. We have recently determined that the basic District Title V permit (and SLFB) are due for structural review and overhaul. We plan to start this process early 2012.

8. Does the statement of basis explain:

Y N

- a. the rationale for monitoring (whether based on the underlying standard or monitoring added in the permit)?

Y N

- b. applicability and exemptions, if any?

Y N

- c. streamlining (if applicable)?

Y N

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

No specific internal training beyond familiarization with standard format, but we do encourage staff to attend regional training (offered by CAPCOA or CARB in most cases) on basic and advanced permit writing, including Title V permit writing.

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

Y N

- a. SIP backlog (i.e., EPA approval still awaited for proposed SIP revisions).

Please note: this is the primary reason we have not abandoned our local permitting process for Title V facilities.

Y N

- b. Pending revisions to underlying NSR permits

Y N

- c. Compliance/enforcement issues

As mentioned earlier we have a pending SIP change that is delaying a Title V permit issuance in AVAQMD.

Y N

d. EPA rule promulgation awaited (MACT, NSPS, etc.)

Y N

e. Permit renewals and permit modification (i.e., competing priorities)

By definition the same staff works on both the local permits and the Title V permit simultaneously. We tend to complete the local permit process first to settle on usable and workable permit condition language. The Title V process is typically last on the checklist. Please note that all applicable requirements are addressed at every level of the process.

Y N

f. Awaiting EPA guidance

11. Any additional comments on permit preparation or content?

Drafting permit conditions and the SLFB would be easier if the SIP gap was reduced or eliminated. Furthermore, constancy both across reviewers and across permits of USEPA comments would allow the quasi-standardization of a variety of conditions which would in turn streamline the permit preparation process.

B. General Permits (GP)

- Y N 1. Do you issue general permits?
- a. If no, go to next section
 - b. If yes, list the source categories and/or emission units covered by general permits.

- Y N 2. In your agency, can a title V source be subject to multiple general permits and/or a general permit and a standard "site-specific" Title V permit?
- a. What percentage of your title V sources have more than one general permit? _____%

- Y N 3. Do the general permits receive public notice in accordance with 70.7(h)?
- a. How does the public or regulated community know what general permits have been written? (e.g., are the general permits posted on a website, available upon request, published somewhere?)

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

- Y N a. the general permit is issued?

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

5. Any additional comments on general permits?

C. Monitoring

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

We specify monitoring type and frequency for every condition with a standard as a matter of policy.

Y N

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

We have used USEPA guidance to date – on local permits there is no formal guidance, but internal policy and precedent has established certain standard monitoring guidelines. Monitoring type and frequency has been adjusted on certain due to particular circumstances such as unique equipment configurations and prior compliance issues.

Y N

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

No specific internal training beyond familiarization with existing permit structure, but we send staff to regional training on this issues (usually CAPCOA or CARB training).

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?

Such monitoring is specified in condition form on the local permit, and is incorporated into the Title V permit under our basic conditioning authority (SIP Rule 204). Monitoring type and frequency is often adjusted to reflect particular circumstances such as unique equipment configurations and prior compliance issues.

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

All.

Y N

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

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?
Daily Press in Victorville (paper of record for San Bernardino County) and Press Enterprise in Riverside (paper of record for Riverside County).
- Y N
2. Do you use a state publication designed to give general public notice?
- Y N
3. Do you sometimes publish a notice for one permit in more than one paper?
- a. If so, how common is it for the District to publish multiple notices for one permit?
All Title V permits are published in both papers.
- b. How do you determine which publications to use?
Papers of record for each County the District is in.
- c. What cost-effective approaches have you utilized for public publication?
None.
- Y N
4. Have you developed mailing lists of people you think might be interested in title V permits you propose? [e.g., public officials, environmentalists, concerned citizens]
- Yes.*
- Y N
- a. Does the District maintain more than one mailing list for Title purposes, e.g., a general Title V list and source-specific lists?
No.
- 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)
By requesting it in any form.
- c. How does the list get updated?
Only through removal of bad addresses or upon request of a recipient.
- d. How long is the list maintained for a particular source?
Not applicable, Our list is a District-wide list used for all Title V actions.

e. What do you send to those on the mailing list?
At a minimum, a copy of the public notice. Please note that the public notice includes the method to request a hard copy of the permit and SLFB.

Y N 5. Do you reach out to specific communities (e.g., environmental justice communities) beyond the standard public notification processes?
However, if any community group or person requests notice we will provide it via a convenient forum.

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

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

Y N 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?
However, if any group or person requests notification in another language we will provide such unless the cost is prohibitively expensive in relation to the number of persons needing the translation.

Public Comments

9. How common has it been for the public to request that the District extend a public comment period?
A request for extension of the comment period has never been received by the District for any Title V permit.

Y N a. Has the District ever denied such a request?

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

Y N 10. Has the public ever suggested improvements to the contents of your public notice, improvements to your public participation process, or other ways to notify them of draft permits? If so, please describe.
No.

11. Approximately what percentage of your proposed permits has the public commented on?
Only a very few at the very beginning of the program, in the late 1990s.

Y N 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? Please explain.
- a. What percentage of your permits change due to public comments?
- Y N 14. Have specific communities (e.g., environmental justice communities) 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?
- a. If not, what type of changes would require you to re-propose (and re-notice) a permit for comment?

EPA 45-day Review

- Y N 16. Do you have an arrangement with the EPA region for its 45-day review to start at the same time the 30-day public review starts? What could cause the EPA 45-day review period to restart (i.e., if public comments received, etc)?
- a. How does the public know if EPA's review is concurrent?
It is stated in the public notice and District Regulation XII (or AVAQMD Regulation XXX).
17. If the District does concurrent public and EPA review, is this process a requirement in your Title V regulations, or a result of a MOA or some other arrangement?
District Regulation XII (or AVAQMD Regulation XXX).

Permittee Comments

- Y N 18. Do you work with the permittees prior to public notice?
Yes, we typically give permittees a preliminary draft to review to catch inadvertent errors and to ensure that local permits work as seamlessly as possible with the Title V requirements.
- Y N 19. Do permittees provide comments/corrections on the permit during the public comment period? Any trends in the type of comments? How do these types of comments or other permittee requests, such as changes to underlying NSR permits, affect your ability to issue a timely permit?
Yes, we have received comments from permittees. In most cases comments involve typographical errors due to cutting and pasting. In rare cases, due to parallel NSR and Title V noticing, there have been BACT and

related issues raised in comment. We do not consider these type of comments as impacting timely issuance because they result in the development of better NSR and Title V permits. Occasionally comments raise issues regarding SIP gap or other potential inconsistencies between the local permit and the Title V permit. These comments also do not impact timely issuance as the inconsistency is usually handled by clarification or modification of the local permit.

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)?

The ability to request a public hearing is listed in the public notice. The District would hold a public hearing if one was requested.

Y N

a. Do you ever plan the public hearing yourself, in anticipation of public interest?

No, we have never had a public hearing on a Title V permit. Public hearings have occurred for Title V facilities. The primary public hearings for such facilities have been NSR permits through the California Energy Commission (which usually occurs more than twelve months prior to the Title V issuance).

Availability of Public Information

Y N

21. Do you charge the public for copies of permit-related documents?

Not for items listed in a public notice. However, for public information act requests (outside the public notice process) a charge may be imposed if the particular document is provided in hard copy format.

If yes, what is the cost per page?

*\$.15 per page unless paper is provided by the requestor. For large document requests mailing and copying charges may be imposed pursuant to the California Public Records Act. Electronic copies are provided free of charge pursuant to District policy. No charges are imposed in the case of a request for a document as listed in a public notice. *

Y N

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

As mentioned above, no charge for a document which has been listed in a public notice.

Y N

b. Do your title V permit fees cover this cost? If not, why not?

The noticing, printing and publishing charges are covered by Title V fees or NSR fees. However, recently the District has begun examining the potential to directly pass through the actual publication costs of the notice in the paper in addition to other fees.

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 process does not differ from our normal process under the California Public Records Act. Upon request anyone may obtain any public document of the District. Pursuant to District policy encouraging digital provision of information we attempt to provide copies by email, as this is the easiest and quickest method. Occassionally, a requestor will have an e-mail size limit or the request includes multiple documents. In such a case we provide the digital copies on CD-Rom via mail. From time to time a requestor has indicated that a hard copy is desired. In such a case we copy the document and charge \$0.15 per page as well as copying time and postage. A public draft hard copy of the Title V permit is placed on our counter with public access during the comment period. Most of our documents are available at any time in the District office. Occasionally, a document will be in off-site storage and not available digitally. In that case it may take several days to retrieve the document.

Y N

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

None beyond our own public counter – we have no field offices. AVAQMD documents are similarly posted at the AVAQMD office.

23. How long does it take to respond to requests for information for permits in the public comment period?
Such requests are processed in the same manner and using the same time periods as required by the California Public Records Act. Simple requests may be processed immediately especially in cases where we can respond electronically. At times we have been known to forward the appropriate electronic document to the requestor while the requestor is still on the telephone requesting the document. There can be a few days of delay for a variety of reasons including but not limited to: size and complexity of the request, off-site location of the document, document not yet available in electronic format, or the document contains clearly marked confidential trade secret information. Under rare circumstances this delay can be longer than 10 days. If a request will take longer than 10 days to fulfill the requestor's permission is sought and a time estimated fulfillment date is provided.

- Y N 24. Have you ever extended your public comment period as a result of requests for permit-related documents?
- Y N b. Do information requests, either during or outside of the public comment period, affect your ability to issue timely permits?
25. 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)?
We have recently posted all current Title V permits. We will post all public notices to the website from this point forward.
- a. How often is the website updated? Is there information on how the public can be involved?
As necessary. No specific information on the Title V program and public involvement is currently posted with the exception of the current Title V Permits. An explanatory page is currently under development. Suggestions for contents and language for such a page are encouraged.
- Y N 26. Have other ideas for improved public notification, process, and/or access to information been considered? If yes, please describe.
We are working towards a public link to our document imaging system, which will make the entire history of the Title V program publicly available. However, there are substantive legal and technical issues which have not yet been addressed. Thus, there is no estimated date of completion for this particular project.
- Y N 27. Do you have a process for notifying the public as to when the 60-day citizen petition period starts? If yes, please describe.
The existence of this period would be one of the things explained on the Title V page. Posting of the permit on the website with an issuance date would therefore provide notice of the commencement of the 60 day petition period.
- Y N 28. Do you have any resources available to the public on public participation (booklets, pamphlets, webpages)?
However, an explanatory page is currently under development. Suggestions for contents and language for such a page are encouraged.
- Y N 29. Do you provide training to citizens on public participation or on title V?
No persons have ever requested such a thing. However, Title V issues have been discussed in various public meetings on rule development issues when applicable. In addition, various staff members have discussed Title

V participation opportunities with members of the general public when such participation is an option as a means of addressing the particular concern.

Y N

30. Do you have staff dedicated to public participation, relations, or liaison?

Our Community Relations and Education (CRE) staff serve this function. However, all staff members from our receptionist all the way to the APCO and District Counsel facilitate public participation in District activities including the Title V permitting process.

a. Where are they in the organization?

CRE is a division that reports directly to the Air Pollution Control Officer.

b. What is their primary function?

CRE has as its primary focus community outreach and education efforts on air quality and environmental issues in general.

Affected State Review and Review by Indian Tribes

31. How do you notify tribes of draft permits?

By public notice.

Y N

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

Y N

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

Any additional comments on public notification?

Assistance in development of a general Title V website page would be appreciated.

E. Permit Issuance / Revision / Renewal

Permit Revisions

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

Y N

a. Administrative amendment?

Name changes, typographical changes, and permit deletions are the only things that qualify for this type of amendment.

Y ■ N □

b. §502(b)(10) changes?

See District Rule 1203(E)(1)(c)(ii) for a detailed description of the process. However, the so called "off permit change" procedure has never been used. Most facilities prefer to apply for a minor modification instead.

Y ■ N □

c. Significant and/or minor permit modification?

All other permit changes are processed as these.

Y ■ N □

d. Group processing of minor modifications?

Applications received together or closely in time are processed together. Since the local permits are processed first, at times multiple modifications received at different times will be completed and then the Title V modification will be processed to encompass all the necessary changes.

2. Approximately how many title V permit revisions have you processed?

Approximately 30, not including renewals. Approximately 4, not including renewals for the AVAQMD.

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

i. Significant

None

ii. Minor

Ten out of 34, or 29%

iii. Administrative

24 out of 34, or 71%

iv. Off-permit

None

v. 502(b)(10)

None

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

a. a significant permit revision?

The District has not received an application for a modification which would be considered significant.

b. a minor revision?

These are not done separately from the local permitting process. Review time is dependent upon a wide variety of factors including but not limited to: the nature and complexity of the modification requested; the completeness of the information in the application; the application of new federal applicable requirements such as NSPS, NESHAP or MACT standards; whether or not BACT is required to be added due to the modification; whether offsetting emissions reductions are required; and whether another agency such as the California Energy Commission, a land use agency, California Regional Water Control Board needs to issue a permit modification. Of course the 45 day review period is a portion of the process time. Our best guestimate would be 120 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. *Common for minor permit revisions. See factors impacting issuance times as explained above. Uncommon for administrative – typically those are processed within 30 days.*
5. What have you done to streamline the issuance of revisions? *We have standardized Title V permit structure and contents, and attempted to educate applicants so that applications are complete and sufficiently detailed to avoid delays.*
6. What process do you use to track permit revision applications moving through your system? *Permits are assigned to a designated staff member. Updates on the process are provided by the staff member so assigned. .*
- Y N 7. Have you developed guidance to assist permit writers and sources in evaluating whether a proposed revision qualifies as an administrative amendment, off-permit change, significant or minor revision, or requires that the permit be reopened? If so, provide a copy.
- Y N 8. Do you require that source applications for minor and significant permit modifications include the source's proposed changes to the permit?
 - a. For minor modifications, do you require sources to explain their change and how it affects their applicable requirements?
- Y N 9. Do you require applications for minor permit modifications to contain a certification by a responsible official that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used?

10. When public noticing proposed permit revisions, how do you identify which portions of the permit are being revised? (e.g., narrative description of change, highlighting, different fonts).
A short (one sentence) description of the nature of the change in the public notice itself. The evaluation document (the preliminary determination) details the changes and specifies new or replacement language. Usually a copy of the proposed language changes in a redline format are provided.
11. When public noticing proposed permit revisions, how do you clarify that only the proposed permit revisions are open to comment?
Through a statement in the public notice.

Permit Renewal Or Reopening

- Y ■ N □ 12. Do you have a different application form for a permit renewal compared to that for an initial permit application?
- a. If yes, what are the differences?
In most cases, where no applicable requirements have changed and there are very few permit changes (often none) we have the permit holder submit a marked-up version of the federal operating permit itself.
- Y ■ N □ 13. Has issuance of renewal permits been “easier” than the original permits? Please explain.
If there have been no substantial changes in the facility all that is required is a review of applicable requirements for currency and currency of individual permit structure.
14. How are you implementing the permit renewal process (ie., guidance, checklist to provide to permit applicants)?
By following our FOP regulation. See District Regulation XII (Regulation XXX in AVAQMD)
15. What % of renewal applications have you found to be timely and complete?
At least 90 percent are timely – the six month clock occasionally catches a permittee by surprise usually due to a lack of dedicated air quality environmental staff at the facility.
16. How many complete applications for renewals do you presently have in-house ready to process?

On November 30, 2011 we have nine renewals in process in the District (none in AVAQMD).

- Y ■ N
17. Have you been able to or plan to process these renewals within the part 70 timeframe of 18 months? If not, what can EPA do to help?
Seven of those will not be completed within the 18 month timeframe, but the delay is primarily due to state diesel IC engine ATCM language and our parallel permitting process.
- Y ■ N
18. Have you ever determined that an issued permit must be revised or revoked to assure compliance with the applicable requirements?
Yes, in the case of CEMEX we had to revise the FOP to address a federal compliance action (the retrofit of ammonia injection). No revocations have been necessary.

F. Compliance

1. Deviation reporting:

- a. Which deviations do you require be reported prior to the semi-annual monitoring report? Describe.
Breakdowns are reported per our breakdown rule (District Rule 430) and longer deviations often obtain variances per our variance process.

Y N

- b. Do you require that some deviations be reported by telephone?
Breakdowns may be reported telephonically as allowed by District Rule 430.

- c. If yes, do you require a follow up written report? If yes, within what timeframe?
Yes. Report is due by next business day, and all such deviations must be documented within the next FOP report.

Y N

- d. Do you require that all deviation reports be certified by a responsible official? (If no, describe which deviation reports are not certified).
Reports submitted under District Rule 430 are not required to be certified. Variance applications do require a certification. Deviations reported as part of an FOP report require a certification.

Y N

- i. Do you require all certifications at the time of submittal?
If a certification is required then it must be included with the submittal (Variance applications and FOP reports). Breakdown reporting under District Rule 430 does not require an official certification.

Y N

- ii. If not, do you allow the responsible official to “back certify” deviation reports? If you allow the responsible official to “back certify” deviation reports, what timeframe do you allow for the follow up certifications (e.g., within 30 days; at the time of the semi-annual deviation reporting)?
The deviation event that is the subject of a District Rule 430 breakdown will eventually get a certification. The certification will occur at the earliest when a variance is applied for or at the latest when the FOP report is submitted.

2. How does your program define deviation?

Non-compliance with an applicable requirement.

- Y N
- a. Do you require only violations of permit terms to be reported as deviations?
- b. Which of the following do you require to be reported as a deviation (Check all that apply):
- Y N
- i. excess emissions excused due to emergencies (pursuant to 70.6(g))
- Y N
- ii. excess emissions excused due to SIP provisions (cite the specific state rule)
Reporting of these are not required unless such emissions are exempted pursuant to an applicable requirement.
- Y N
- iii. excess emissions allowed under NSPS or MACT SSM provisions?
Some facilities have been known to report these anyway and cite the appropriate exemption.
- Y N
- iv. excursions from specified parameter ranges where such excursions are not a monitoring violation (as defined in CAM)
Some facilities have been known to report these anyway and cite the appropriate exemption.
- Y N
- v. excursions from specified parameter ranges where such excursions are credible evidence of an emission violation.
Items in this category would most likely be considered non-compliance with an applicable requirement.
- Y N
- vi. failure to collect data/conduct monitoring where such failure is “excused”:
- Y N
- A. during scheduled routine maintenance or calibration checks
- Y N
- B. where less than 100% data collection is allowed by the permit
- Y N
- C. due to an emergency
- Y N
- vii. Other? Describe.
We encourage facilities to report any potential violation that they happen to find.

3. Do your deviation reports include:

Y N

a. the probable cause of the deviation?

Y N

b. any corrective actions taken?

Y N

c. the magnitude and duration of the deviation?

Y N

4. Do you define “prompt” reporting of deviations as more frequent than semi-annual?

District Rule 430 requires reporting of deviations within 24 hours.

Y N

5. Do you require a written report for deviations?

District Rule 430 requires both an initial and a final report. Variances often by their terms require reports and the FOP report is, of course, a written report.

Y N

6. Do you require that a responsible official certify all deviation reports?

Not for breakdown rule reporting – this can be done by an operator but the follow-up FOP reporting must, of course, be certified.

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

a. deviation reports?

Assigned staff review the reports for breakdown rule/variance process compliance and possible enforcement action including but not limited to federal tracking system entry.

b. semi-annual monitoring reports?

Assigned staff review for rule/requirement compliance and possible enforcement action including federal tracking system entry).

c. annual compliance certifications?

Assigned staff review for rule/requirement compliance and possible enforcement action including federal tracking system entry.

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

a. deviation reports

100%

b. semi-annual monitoring reports

100%

- c. annual compliance certification
100%

9. Compliance certifications

- Y N a. Have you developed a compliance certification form? If no, go to question 10.
- Y N 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?
- Y N iii. Do you require sources to use the form? If not, what percentage does?
Facilities may use their own formatting upon agreement with the District.
- Y N iv. Does the form account for the use of credible evidence?
Specific evidence is not required to be attached to the compliance certification. Since the form itself has a signature under penalty of perjury (or the standard certification form is attached) it becomes, in effect, "testimony" regarding the existence or non-existence of deviations. If the District has a question, needs additional information, or wishes to investigate a specific or potential deviation we request such information pursuant to California Health & Safety Code §42303 and use our investigatory/inspection powers to locate evidence if necessary.
- 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?

10. Excess emissions provisions:

- Y N a. Does your program include an emergency defense provision as provided in 70.6(g)? If yes, does it:
 - Y N i. Provide relief from penalties?

Covered by general District enforcement powers. See also District Rule 430 and District Standard Practices regarding enforcement as well as California Health & Safety Code §§41500 et seq.

Y N

ii. Provide injunctive relief?
See California Health & Safety Code §41513

Y N

iii. Excuse noncompliance?
If noncompliance is proven or substantial evidence exists indicating a violation the District still considers it noncompliance regardless of whether a penalty is imposed or not. See District Standard Practices regarding enforcement.

Y N

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

Y N

i. Provide relief from penalties?

Y N

ii. Provide injunctive relief?

Y N

iii. Excuse noncompliance?

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

Y N

i. the emergency defense provision?
The District will independently determine if the facility has properly complied with the provisions of Rule 430.

Y N

ii. the SIP excess emissions provision?
N/A

Y N

iii. NSPS/NESHAP SSM excess emissions provisions?
The District will independently determine if the facility has properly invoked these provisions.

11. Is your compliance certification rule based on:

Y N

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

Y N

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

Neither. Compliance is determined dependent upon the wording of the specific applicable requirement or with the wording of the particular permit condition. For example, a flat emissions limit in a rule which was made enforceable by a permit condition specifying compliance on a rolling 30 day average as measured by a CEMS system would be out of compliance if the daily average (of the 30 days prior) was over the limit absent a breakdown condition under Rule 430. Each day, or portion of a day would be a separate noncompliant event. Each noncompliant event would need to be reported as a deviation as part of the annual compliance certification.

The Title V compliance certification is basically a sworn statement that Facility X was in compliance with all applicable requirements except for the times/provisions listed on the deviation report. It does not matter if the compliance was continuous or intermittent – if the facility was not in compliance and the noncompliance was not listed on the deviation report then the facility is not only subject to potential penalties for the noncompliance itself but also for violation of the compliance certification requirement as well as potential fraudulent submission of information.

Please note that this particular view of facility compliance is based upon the fact that each Title V facility in the district also holds local permits. Most of the enforcement actions are primarily based upon violations of the local permit which in most cases would also be a violation of the Title V permit condition. Title V violations are alleged as standalone violations when there is a failure to submit something for the Title V program or in a SIP gap situation when there is a noncompliant event which violates both the current district rule and the SIP rule.

12. Any additional comments on compliance?

G. Resources & Internal Management Support

- Y N 1. Are there any competing resource priorities for your “title V” staff in issuing Title V permits?

a. If so, what are they?

The same staff perform all permitting functions including local permitting and new source review. Additional resources may be required to address prevention of significant deterioration permitting activities if and when such authority is delegated to the District.

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?

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

FOP tracking sheet.

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

- Y N 5. Do you charge Title V fees based on emission rates?

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

A fixed percentage of equipment maximum rating-based local annual permit operating fees. A flat annual fee in Antelope Valley.

b. What is your Title V fee?

An additional 14.3% of local permit fees. \$1000.00 per year per facility in Antelope Valley. \$287,039.13 during the most recent fiscal year (\$5000.00 in Antelope Valley).

6. How do you track title V expenses?

Not separately tracked.

7. How do you track title V fee revenue?

As a budgetary line item.

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

Four

- Y N 9. Do the permit writers work full time on Title V?

- a. If not, describe their main activities and percentage of time on title V permits.
Local and federal permit application processing, local permit maintenance, permit-related regulatory programs including emissions inventory. Roughly one third of staff time is spent on FOP actions or is indirectly related to FOP actions.
- b. How do you track the time allocated to Title V activities versus other non-title V activities?
Not separately tracked.

Y N

10. Are you currently fully staffed?

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

42 federal operating permits or pending FOP applications between both districts, so 10.5 FOPs per engineer. 4954 local permits between both districts, so 1238.5 local permits per engineer.

12. Describe staff turnover.

Only by retirement – we do not have a staff turnover problem.

- a. How does this impact permit issuance?
No impact.

- b. How does the permitting authority minimize turnover?
By spreading the work over all assigned staff.

Y N

13. Do you have a career ladder for permit writers?

- a. If so, please describe.

Y N

14. Do you have the flexibility to offer competitive salaries?

Y N

15. Can you hire experienced people with commensurate salaries?

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

All available local (as in CAPCOA) and state training. Involvement in professional organizations (such as A&WMA). Periodic internal familiarization training (cross-training). Periodic internal staff meetings to address FOP issues. Group problem solving.

17. Does your training cover:

Y N

- a. how to develop periodic and/or sufficiency monitoring in permits?

- Y N b. how to ensure that permit terms and conditions are enforceable as a practical matter?
- Y N c. how to write a Statement of Basis?
However, a standard format for this is provided and staff has direct access to management and legal counsel for assistance.
- Y N 18. Is there anything that EPA can do to assist/improve your training? Please describe.
Offer training and we will attend.
19. How has the District organized itself to address Title V permit issuance?
We have abandoned the dedicated staff concept and distributed the work across the entire stationary sources group.
20. Overall, what is the biggest internal roadblock to permit issuance from the perspective of Resources and Internal Management Support?
Keeping up with the constant changes (and increases) in regulatory requirements (state and federal). In addition, inconsistencies in review standards and comments between permit reviewers and over time as well as lack of clearly stated rationales' for requested changes tends to result in inordinate amounts of staff/management time and effort to research develop acceptable permit condition language.

Environmental Justice Resources

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

If so, may EPA obtain copies of appropriate documentation?
- Y N 22. Do you have an in-house EJ office or coordinator, charged with oversight of EJ related activities?
- Y N 23. Have you provided EJ training / guidance to your permit writers?
- Y N 24. Do the permit writers have access to demographic information necessary for EJ assessments? (e.g., soci-economic status, minority populations, etc.)
- Y N 25. When reviewing an initial or renewal application, is any screening for potential EJ issues performed? If so, please describe the process and/or attach guidance.

H. Title V Benefits

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

Y N

a. NSPS requirements?

Y N

b. The stationary source requirements in the SIP?
SIP Gap and tracking SIP provisions has been an issue since the initial SIP submission in 1972.

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?
Inconsistencies between permit reviewers and over time coupled with lack of clarity in the rationale for suggested permit language changes make this difficult. Staff has always had a good understanding of writing permit conditions which are enforceable as to local permits but this expertise does not seem to carry much weight when attempting to draft "federal" permit conditions.

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

Y N

a. Your source universe including additional sources previously unknown to you?

Y N

b. Your source operations (e.g., better technical understanding of source operations; more complete information about emission units and/or control devices; etc.)?
Since the local permits are developed on an emissions unit by unit basis the District has always had a good technical understanding of its major facilities.

Y N

c. Your stationary source emissions inventory?

Y N

d. Applicability and more enforceable (clearer) permits?
Upgrading and streamlining local permits to avoid conflict with the Title V permits has, overall, improved the quality of the local permits.

3. In issuing the Title V permits:

Y N

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

Permitting requirements and standardized language shift and change with time and experience. Updating permit conditions is ongoing across all permits and sources. The intent is that whenever a permit, local or Title V, is touched that the language be updated to the most recent standard.

Y N

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

Once again, the intent is that whenever a permit, local or Title V is touched the language be updated to the most recent standard. Since our local permits are issued/renewed on an annual basis updates tend to occur frequently. The District is attempting to standardize language across permits for similar equipment and to document the providence of any unique conditions.

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

Never Occasionally Frequently Often

- | | | | | |
|---------------------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| a. prior to submitting an application | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. prior to issuing a draft permit | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. after issuing a final permit | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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

Never Occasionally Frequently Often

- | | | | | |
|--|--------------------------|-------------------------------------|--------------------------|--------------------------|
| a. NSPS requirements (including failure to identify an NSPS as applicable) | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. SIP requirements | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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

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

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

Y N

a. increased use of self-audits?

Y N

b. increased use of environmental management systems?

Y N

c. increased staff devoted to environmental management?

Y N

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

Y N

e. increased resources devoted to compliance monitoring?

Y N

f. better awareness of compliance obligations?

Y N

g. other? Describe.

Y N

7. Have you noted a reduction in emissions due to the Title V program?

Y N

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

Y N

b. Did that lead to a change in the fee rate (dollars/ton rate)?

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

Y N

a. netting actions

Y N

b. emission inventories

Y N

c. past records management (e.g., lost permits)

Y N

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

- Y N e. identifying source categories or types of emission units with pervasive or persistent compliance problems; etc.
- Y N f. clarity and enforceability of NSR permit terms
- Y N g. better documentation of the basis for applicable requirements (e.g., emission limit in NSR permit taken to avoid PSD; throughput limit taken to stay under MACT threshold)
- Y N h. emissions trading programs
- Y N i. emission caps
- Y N j. other (describe)
- Y N 9. If yes to any of the above, would you care to share how this improvement came about? (e.g., increased training; outreach; targeted enforcement)?
- Y N 10. Has Title V changed the way you conduct business?
- Y N a. Are there aspects of the Title V program that you have extended to other program areas (e.g., require certification of accuracy and completeness for pre-construction permit applications and reports; increased records retention; inspection entry requirement language in NSR permits). If yes, describe.
More comprehensive local permitting, better interpretation of local requirements in permit condition form, and improved clarity in recordkeeping requirements. An increased emphasis on proper citation for underlying regulatory requirements.
- Y N b. Have you made changes in how NSR permits are written and documented as a result of lessons learned in Title V (e.g., permit terms more clearly written; use of a statement of basis to document decision making)? If yes, describe.
We have propagated the requirement citation concept down into the NSR process.
- Y N c. Do you work more closely with the sources? If yes, describe.
The District has worked diligently both pre and post Title V program to forge a close working relationship with its regulated facilities.

- Y N
- d. Do you devote more resources to public involvement? If yes, describe.
- Y N
- e. Do you use information from Title V to target inspections and/or enforcement?
- Y N
- f. Other ways? If yes, please describe.
- Y N
11. Has the Title V fee money been helpful in running the program? Have you been able to provide:
- Y N
- a. better training?
- Y N
- b. more resources for your staff such as CFRs and computers?
- Y N
- c. better funding for travel to sources?
- Y N
- d. stable funding despite fluctuations in funding for other state programs?
- Y N
- e. incentives to hire and retain good staff?
- Y N
- f. are there other benefits of the fee program? Describe.
- Y N
12. Have you received positive feedback from citizens?
- Y N
13. Has industry expressed a benefit of Title V? If so, describe.
- Y N
14. Do you perceive other benefits as a result of the Title V program? If so, describe.
- Y N
15. Other comments on benefits of Title V?

Good Practices not addressed elsewhere in this questionnaire

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

EPA assistance not addressed elsewhere in this questionnaire

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

Appendix C

WORKPLAN FOR MDAQMD TITLE V PROGRAM EVALUATION

**Workplan
for
Title V Program Evaluation
Mojave Desert Air Quality Management District**

US EPA, Region 9

OBJECTIVES

- To perform a title V program evaluation of the Mojave Desert Air Quality Management District (MDAQMD)
- To identify any areas for improvement in MDAQMD's title V program and in EPA's own oversight role.
- To identify areas where MDAQMD's program could be used as an example for other permitting authorities to improve their implementation of title V.

MDAQMD is one of several air permitting agencies in Region 9 where EPA plans to perform title V program evaluations. These evaluations are being performed nationwide by EPA.

EPA PROGRAM EVALUATION TEAM FOR MDAQMD

The following staff and managers are part of EPA's program evaluation team. Should you have any questions, please contact Roger Kohn (415/972-3973) or Gerardo Rios (415/972-3974).

Site Visit Participants:

1. Kerry Drake - Air Division Associate Director, Division lead for MDAQMD
2. Gerardo Rios - Air Division Permits Office Chief
3. Roger Kohn - MDAQMD title V program evaluation coordinator, Permits Office
4. Andrew Chew - MDAQMD title V program evaluation team member
5. Geoffrey Glass - MDAQMD title V program evaluation team member
6. Ken Israels – MDAQMD title V program evaluation team member, Grants and Program Integration Office

Other EPA Staff Providing Assistance:

7. Kara Christenson - Office of Regional Counsel
8. Roberto Gutierrez – Air Division, Permits Office

APPROACH

The program evaluation will be conducted in two stages.

- Stage I: MDAQMD's responses to the title V program evaluation questionnaire will help us prepare for the second stage of the program evaluation.
- Stage IIa: In-House File Review. EPA will conduct a review of in-house permit files prior to the site visit.
- Stage IIb: Site Visit (interviews and on-site file reviews). During the site visit, EPA will visit MDAQMD to interview staff and managers involved in the title V program. In addition, EPA will conduct a review of MDAQMD files/systems, such as any title V-related documents which were not available during the in-house file review, MDAQMD tracking system for title V permits and related documents, and standard operating procedures.
- Stage IIc: Follow-up and Report. EPA may need to contact certain MDAQMD staff/managers for follow-up questions and/or to complete some interviews. EPA will prepare a draft report, which we will share with MDAQMD for review and comment. EPA will then issue the final report.

DETAILED DESCRIPTION OF EPA EFFORTS

EPA will examine how MDAQMD implements its title V permitting program. Particular emphasis will be placed on MDAQMD overall program goals and how decisions are made. We will also review some aspects of the program implementation budget and evaluate how title V resources are allocated. We will work closely with MDAQMD throughout the program evaluation.

Needed Information

Listed below is information EPA will need to help us prepare for the site visit to MDAQMD:

- A listing of staff related to the title V program with their respective responsibilities.
- MDAQMD's current organizational chart with names and phone numbers.
- A flowchart (or other information) of MDAQMD's title V fee structure clearly showing how fees are set, collected, tracked, and used in support of the program. In addition, MDAQMD should provide specific references to title V fee-related legislation used by the Department.
- a list of sources that MDAQMD regulates under its title V program

Interviews

During the site visit, EPA will interview MDAQMD managers and staff who are involved with the title V program. EPA will schedule interview appointments in

advance. We would like to ask for your assistance in identifying appropriate interviewees.

During the interviews, we plan to ask questions based on the areas addressed in the title V Program Evaluation Questionnaire sent to MDAQMD. These areas include (1) title V permit preparation and content, (2) monitoring, (3) public participation, (4) permit issuance, revision, and renewal, (5) compliance, (6) resources & internal management support, and (7) title V benefits. EPA's interview questions may also be based upon our in-house file reviews.

Other Site Visit Activities

EPA plans to review the systems used by MDAQMD for tracking title V permits, applications, emission inventories, title V fees, compliance certifications, and related reports. We would also like to examine how title V permit and compliance files are organized at the MDAQMD office. We may also review title V-related documents that were not available during our in-house file review. During our site visit, we will need access to all the systems and files described above.

Site Visit Schedule

The site visit will occur in January 2012. We will work with MDAQMD before the site visit to schedule individual, on-site interviews. In general, we plan to conduct interviews for the first four days and review the tracking systems and files on the last day.

Follow-up After Site Visit and Completion of Report

EPA may follow up by phone with MDAQMD after the site visit to ask for clarification on any questions or issues resulting from our visit. Also, in previous program evaluations, we occasionally found that we were not able to ask all the interview questions in the time allotted for the interview. If this occurs during the MDAQMD evaluation, we will coordinate with MDAQMD to schedule follow-up interviews.

EPA plans to issue a draft report in mid-2012. The report will be based on the interviews, the site visit, and our internal file reviews of title V permits and related documents issued by MDAQMD. The report will allow EPA to document the successes and areas needing improvement that arise from the program review. Prior to public release, EPA will issue the draft report to MDAQMD for a 30-day review and comment period. After considering MDAQMD's comments and input, EPA will issue the final report with our recommendations.

A copy of EPA's final report will be made publicly available and will be published on our website. If a corrective action plan is necessary, there may be a follow-up step after the corrective action plan is finalized to determine how well the recommendations/commitments are being implemented.

Appendix D

SUMMARY OF EPA GUIDANCE ON REQUIRED STATEMENT OF BASIS ELEMENTS

Elements of a Statement of Basis

Elements	Region 9's February 19, 1999 letter to SLOC APCD	NOD to Texas' part 70 Program (January 7, 2002)	Region 5 letter to state of Ohio (December 20, 2001)	Los Medanos Petition Order (May 24, 2004)	Bay Area Refinery Petition Orders (March 15, 2005)	EPA's August 1, 2005 letter regarding Exxon Mobil proposed permit
New Equipment	Additions of permitted equipment which were not included in the application					√ ¹
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	Alternative operating scenarios	A discussion of any operational	√			√

¹ Throughout this table, checkmarks in the column of a particular guidance document in the table indicate that on the issue identified in that row, the document refers to a previous guidance document.

Scenarios and Operational Flexibility		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	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

	available document.					
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

August 2, 2005

Mr. Mohsen Nazemi
Assistant Deputy Executive Officer
Engineering and Compliance Division
South Coast Air Quality Management District
21865 East Copley Drive
Diamond Bar, CA 97165-4182

Re: EPA Review of the Proposed Title V Permit for ExxonMobil (Facility ID 80089)

Dear Mr. Nazemi:

Thank you for the opportunity to review the proposed title V permit for the ExxonMobil Petroleum Refinery (Facility ID 80089) in Torrance, CA.

As you are aware, SCAQMD initially submitted a proposed title V permit to EPA for this facility in February 2003. EPA provided comments in response to the District's proposal, but SCAQMD did not issue a final permit to the facility. On May 6, 2005, SCAQMD transmitted a revised draft permit to EPA for review, with responses to EPA's 2003 comments. On June 16, SCAQMD formally transmitted a proposed permit to EPA for a formal 45-day review period. As stated in the District's letter, EPA's 45-day review period began on June 20, 2005. EPA's 45-day review period ends on August 3, 2005.

On August 1, 2005, EPA sent preliminary comments to SCAQMD. Per an August 2, 2005 letter from SCAQMD, we understand that SCAQMD will withhold issuance of a final title V permit for this facility for 30 days to allow time to resolve the issues identified in the August 1, 2005 letter to the mutual satisfaction of EPA and SCAQMD.

If, upon issuance of the final permit by SCAQMD, EPA finds that the permit does not satisfy the requirements for title V permits under 40 C.F.R. Part 70 and the District's title V program, EPA retains the authority to reopen the permit for ExxonMobil under 40 C.F.R. §70.7(g)(1).

Again, we appreciate the opportunity to review the proposed permit, and we look forward to working with you and your staff in the coming weeks to finalize an initial title V permit for ExxonMobil. Please do not hesitate to contact me at (415) 972-3974, or Kathleen Stewart (415) 947-4119 and Joseph Lapka (415) 947-4226 of my staff with any questions you may have on our comments.

Sincerely,



Gerardo C. Rios
Chief, Air Permits Office

cc: Barbara Baird, SCAQMD
Carol Coy, SCAQMD
Hamed Mandilawi, SCAQMD
Pang Mueller, SCAQMD
Tran Vo, SCAQMD
Penny Wirsing, ExxonMobil



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

August 1, 2005

Pang Mueller
Senior Manager
Refinery, Energy and RECLAIM Administration
South Coast Air Quality Management District
21865 East Copley Drive
Diamond Bar, CA 97165-4182

RE: Preliminary EPA Comments on the Proposed Title V Permit for ExxonMobil

Dear Ms. Mueller:

The purpose of this letter is to provide the South Coast Air Quality Management District (SCAQMD) with EPA's preliminary comments on the proposed title V permit for the ExxonMobil refinery in Torrance, CA (Facility ID 80089).

As you are aware, SCAQMD initially submitted a proposed title V permit to EPA for this facility in February 2003. EPA provided comments in response to the District's proposal, but SCAQMD did not issue a final permit to the facility. On May 6, 2005, SCAQMD transmitted a revised draft permit to EPA for review, with responses to EPA's 2003 comments. On June 16, SCAQMD formally transmitted a proposed permit to EPA for a formal 45-day review period. As stated in the District's letter, EPA's 45-day review period began on June 20, 2005. EPA's 45-day review period ends on August 3, 2005.

We appreciate the opportunity to review the most recently proposed permit, and are providing our initial comments in the attached document. We look forward to working with you and your staff to address these issues in the coming week. EPA will provide SCAQMD with a final comment letter by the end of our 45-day review period.

Please do not hesitate to contact me at (415) 972-3974, or Kathleen Stewart (415) 947-4119 and Joseph Lapka (415) 947-4226 of my staff with any questions you may have on our comments. We will be available to spend as much time as needed discussing these issues with you between now and the end of our review period.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerardo C. Rios".

Gerardo C. Rios
Chief, Air Permits Office

Enclosures (2)

cc: Barbara Baird, SCAQMD
Carol Coy, SCAQMD
Hamed Mandilawi, SCAQMD
Mohsen Nazemi, SCAQMD
Tran Vo, SCAQMD
Penny Wirsing, ExxonMobil

Attachment 1

PRELIMINARY EPA COMMENTS ExxonMobil (Facility ID 800089) SCAQMD Proposed Permit

August 1, 2005

1. Statement of Basis

A Title V permitting authority must provide EPA with a "statement that sets forth the legal and factual basis for the draft permit conditions."¹ EPA can object to a proposed title V permit if the permitting authority does not provide enough information to allow a meaningful EPA review of whether the proposed permit is in compliance with the requirements of the Act.² In addition to providing EPA with a copy of the statement of basis, the permitting authority must also provide the statement of basis to "any other person who requests it." Thus, the statement of basis is an important document for the public's review of the proposed title V permit because it provides the permitting authority, the public, and EPA a record of the applicability and technical issues surrounding the issuance of the permit.

In recent years, EPA has provided guidance regarding what is necessary for a statement of basis. In a letter dated February 19, 1999 to Mr. David Dixon, Chair of the CAPCOA Title V Subcommittee, EPA Region 9 provided the following list of air quality requirements that should be considered when developing a statement of basis. This list was developed with CAPCOA input and served as guidance to the state permitting authorities about what is necessary for EPA review.

- additions of permitted equipment which were not included in the application;
- identification of any applicable requirements for insignificant activities or State-registered portable;
- equipment that have not previously been identified at the Title V facility;
- outdated SIP requirement streamlining demonstrations;
- multiple applicable requirements streamlining demonstrations;
- permit shields;
- alternative operating scenarios;
- compliance schedules;
- CAM requirements;

¹ See 40 C.F.R. § 70.7(a)(5).

² See May 10, 1991 preamble to the Part 70 regulations at 56 FR 21750 and 40 C.F.R. § 70.8(c)(3)(ii).

- plant wide allowable emission limits (PAL) or other voluntary limits;
- any district permits to operate or authority to construct permits;
- periodic monitoring decisions, where the decisions deviate from already agreed-upon levels (e.g., monitoring decisions agreed upon by the district and EPA either through: the Title V periodic monitoring workgroup; or another Title V permit for a similar source). These decisions could be part of the permit package or could reside in a publicly available document.

In January, 2002, EPA issued three Orders in response to title V petitions in New York. Each Order addressed the statement of basis issue as presented in those petitions. *See In Re Albert Einstein College of Medicine of Yeshiva University*, Petition No. II-2000-01 (January 16, 2002); *In Re Action Packaging Corp.*, Petition No. II-2000-2 (January 16, 2002); *In Re Kings Plaza Total Energy Plant*, Petition No. II-2000-3 (January 16, 2002).

In addition, in a January 7, 2002 *Federal Register* Notice of Deficiency (NOD) for the State of Texas' part 70 program, EPA stated that the state's part 70 program lacked any regulatory requirement for a statement of basis, and that the permits issued by Texas did not include a statement of basis. In describing the statement of basis requirements, EPA said, "a statement of basis should include, but is not limited to, a description of the facility, a discussion of any operational flexibility that will be utilized at the facility, the basis for applying the permit shield, any federal regulatory applicability determinations, and the rationale for the monitoring methods selected."

Also, EPA Region 5 issued a letter shortly before the Texas NOD was published, dated December 20, 2001, to the state of Ohio that provided guidelines to the state on the content of an adequate statement of basis. The letter from Region 5 recommends the same five (5) elements quoted above from the Texas NOD. In addition, however, the Region 5 letter also recommends, in more detail, the following elements of a statement of basis: 1) monitoring and operational restrictions requirements; 2) applicability and exemptions; 3) explanation of any conditions from previously issued permits that are not being transferred to the title V permit; 4) streamlining requirements; and 5) certain factual information as necessary.

Finally, on May 24, 2004, the EPA Administrator signed an order granting in part a petition requesting the EPA to object to the title V permit for the Los Medanos Energy Center. In relevant part, the petitioner alleged that the Los Medanos permit lacked a statement of basis, and that, without a statement of basis it is virtually impossible for the public to evaluate the periodic monitoring requirements (or lack thereof). In granting the petition on this issue, the Administrator of the EPA concluded that, taken together, the existing guidance on statements of basis outlined above provide a good road map as to what should be included in a statement of basis:

Each of the various guidance documents, including the Texas NOD and the Region V and IX letters, provide generalized recommendations for developing an adequate statement of basis rather than "hard and fast" rules on what to include

in any given statement of basis. Taken as a whole, these recommendations provide a good road map as to what should be included in a statement of basis considering, for example, the technical complexity of the permit, the history of the facility, and any new provisions, such as periodic monitoring conditions, that the permitting authority has drafted in conjunction with issuing the title v permit. See In the Matter of Los Medanos Energy Center at 10-11 (May 24, 2004).

EPA Region 9 has relied on the above guidelines and the EPA Administrator's position, as outlined in the Los Medanos Petition, in reviewing the adequacy of the statement of basis for the ExxonMobil permit. Specific deficiencies are identified in comments 2-14, where applicable. See the attached EPA version of the statement of basis for further suggestions on how to improve the statement of basis.

2. Multiple NOVs

EPA's Part 70 regulations require a compliance schedule for "applicable requirements for sources that are not in compliance with those requirements at the time of permit issuance." 40 CFR §§70.6(c)(3), 70.5(c)(8)(iii)(C). Consistent with these requirements, EPA has stated that a compliance schedule is not necessary if a violation is intermittent, not on-going, and has been corrected before the permit is issued. *See In the Matter of New York Organic Fertilizer Company*, Petition Number II-2002-12 at 47-49 (May 24, 2004).

EPA has also stated that the permitting authority has discretion not to include in the permit a compliance schedule where there is a pending enforcement action that is expected to result in a compliance schedule (i.e., through a consent order or court adjudication) for which the permit will be eventually reopened. *See In the Matter of Huntley Generating Station*, Petition Number II-2002-01, at 4-5 (July 31, 2003); see also *In the Matter of Dunkirk Power, LLC*, Petition Number II-2002-02, at 4-5 (July 31, 2003).

SCAQMD has attached the following compliance-related documents to the revised statement of basis for ExxonMobil, sent to EPA on June 1, 2005:

- Summary Report of Violations (May 2002-May 2005);
- Summary of Breakdown Reports (May 2002-May 2005); and
- Variances and Abatement Orders (Cases Filed since January 1, 2000 and Cases Filed Prior to January 1, 2000 with Pending Compliance Dates)

According to these documents, SCAQMD has issued several Notices of Violation (NOVs) to the ExxonMobil facility in the past five years. Some of these NOVs are, as of yet, pending legal action. Additionally, SCAQMD has indicated that ExxonMobil is currently operating out of compliance with Condition 4 of Section E of the permit, which states: The operator shall not use equipment identified in this facility permit as being connected to air pollution control equipment unless they are so vented to the identified air

pollution control equipment which is in full use and which has been included in this permit." SCAQMD has included Condition I1.1 in the permit, requiring the source to comply with all requirements of District Variance Case No. 1183-384, dated February 16, 2005. This condition is included in the permit pursuant to Rule 3004(a)(10)(C). Rule 3004(a)(10)(C) requires:

For facilities that are not in compliance with all applicable regulatory requirements at the time of permit issuance or permit renewal, a requirement to comply with all requirements of an alternative operating condition, variance or order for abatement issued by the District Hearing Board. The permit shall include a compliance schedule of remedial measures, including an enforceable sequence of actions with milestones, to be taken by the owner or operator to achieve compliance. This compliance schedule shall resemble and be at least as stringent as that contained in any:

- (i) Judicial consent decree or administrative order to which the source is subject; or*
- (ii) Findings or decisions issued by the District Hearing Board as a result of any administrative proceeding concerning the source.*

SCAQMD has indicated in phone calls that it is expected that all NOVs will be settled by the time of permit issuance, and that the facility is currently in compliance with all rules and regulations. However, EPA feels that the current record calls for a discussion of the compliance history in the Statement of Basis. As currently drafted, the Statement of Basis on page 23 only contains the statement: "Currently we are not aware of any ongoing violation at the facility."

Recently, on March 15, 2005, EPA granted petitions to object to the issuance of the title V permits for the Tesoro and Valero refineries in the San Francisco Bay Area on the issue of multiple NOVs (*See In the Matter of Tesoro Refining and Marketing Co.*, Petition Number IX-2004-06, at 14-16, and *In the Matter of Valero Refining Company*, Petition Number IX-2004-07, at 14-17). In requiring the District to reopen the permits to either incorporate compliance schedules in the permits or to provide a more complete explanation for its decision not to do so, the EPA Administrator states:

The District's statements in the permitting record...create the impression that no NOVs were pending [at the time of permit issuance]. Although the District acknowledges that there have been "recent violations," the District fails to address the fact that it had issued a significant number of NOVs to the facility and that many of the issued NOVs were still pending. Moreover, the District provides only a conclusory statement that there are no ongoing or recurring problems that could be addressed with a compliance schedule and offers no explanation for this determination. The District's statements give no indication that it actually reviewed the circumstances underlying recently issued NOVs to determine whether a compliance schedule was necessary. The District's mostly generic statements as to the refinery's compliance status are not adequate to support the

District's decision that no compliance schedule was necessary in light of the NOV's.

Though there are fewer NOV's for the ExxonMobil facility than for Tesoro or Valero, we find that the situations are significantly similar, and that the conclusion reached for the Tesoro and Valero petition orders are relevant to the ExxonMobil permit. Additionally, the February 19, 1999 letter issued by EPA Region 9 to Mr. David Dixon, Chair of the CAPCOA Title V Subcommittee referred to in Comment 1, above, included compliance schedules as among the items that should be considered in drafting a statement of basis.

In order for the ExxonMobil permit to be in compliance with title V (40 CFR §§70.6(c)(3), 70.5(c)(8)(iii)(C)), and to be consistent with previous guidance, SCAQMD must discuss the need for a compliance schedule for any outstanding NOV's at time of permit issuance; if a compliance schedule for outstanding NOV's is not needed, then the statement of basis should clearly discuss why no compliance schedule is needed. Additionally, SCAQMD should analyze the NOV's to determine whether there is a pattern of recurring noncompliance that should be addressed with a compliance schedule. As with outstanding NOV's, any conclusion that no compliance schedule is necessary should be documented in the statement of basis.

The statement of basis should also discuss the noncompliance with Condition 4 of Section E, and should describe what actions, including milestones, will be taken by ExxonMobil in order to return to compliance with the permit. Finally, Condition I1.1 should be revised to meet the requirements of Rule 3004(a)(10)(C), which requires that the permit include a compliance schedule of remedial measures, including an enforceable sequence of actions with milestones, to be taken by the owner or operator to achieve compliance. As proposed, Condition I1.1 simply requires the source to comply with the District Variance of February 16, 2005, but does not contain, as required by Rule 3004 and 40 C.F.R §§ 70.6(c)(3), 70.5(c)(8)(iii)(C), a compliance schedule of remedial measures with milestones. The permit should specifically state what steps ExxonMobil will take to return to compliance, and the dates by which these steps will be accomplished.

3. NSPS Subpart J Requirements for Flares, Thermal Oxidizers, and Incinerators

A. Applicability

Units C891, C892, D898, D899, C1558, C626, C686, C687

Units C891, C892, D898, D899, and C1558 are flares (D898 and D899 are tank flares). Unit C626 is a tail gas incinerator, and units C686 and C687 are direct gas-fired incinerators. All of these units combust refinery fuel gas, as that term is defined in NSPS Subpart J. If these units were built or modified after June 11, 1973, then NSPS Subpart J should be included as an applicable requirement in the permit. Because of common confusion over how NSPS Subpart J applies to

certain flares, thermal oxidizers, and incinerators, please discuss applicability of NSPS Subpart J to these units in the statement of basis. If all of these units were constructed prior to June 11, 1973, and have not been modified since, then a simple statement regarding date of construction/modification would suffice¹.

Please note that in both the January 7, 2002 NOD for the State of Texas and in the December 20, 2001 letter issued by EPA Region 5 to the State of Ohio, EPA indicated that a statement of basis should discuss any federal regulatory applicability determinations. Additionally, in the March 15, 2005 Orders regarding the title V permits for Chevron, ConocoPhillips, Tesoro, and Valero, EPA consistently required the Bay Area Air Quality Management District to document applicability determinations in the statement of basis. See, for instance, *In the Matter of Tesoro Refining and Marketing Co.*, Petition Number IX-2004-06, at 6, 7, and 43.

*B. Monitoring for the H2S/SO2 limit
Units C894, C951, and C952*

Unit C894 is a flare. The permit indicates that this flare is subject to NSPS Subpart J. However, the permit does not require the use of a representative continuous H2S monitor under 40 CFR §60.105(a)(4), nor does the statement of basis explain why no monitoring has been included in the permit. As proposed, the permit does not appear to contain all applicable requirements, as required by 40 C.F.R §70.6(a)(1). SCAQMD should either add the monitoring pursuant to 40 CFR §60.105(a)(3) or (4), or explain in the statement of basis any rationale for not requiring such monitoring.

Unit C951 is a tail gas incinerator, and unit C952 is a thermal oxidizer. The permit indicates that these units are subject to the H2S limit of NSPS Subpart J. Permit condition D82.1 requires ExxonMobil to install and maintain a continuous emissions monitoring system (CEMs) to measure SOx concentration, in ppm. However, the regulatory basis for this condition is SIP Rule 2011, Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions. Please add NSPS Subpart J as an underlying regulatory basis for this

¹ Please note that this information is not readily available to EPA as we review the permit, nor would this information be readily available to the public. While SCAQMD has included engineering evaluations in a CD attached to the statement of basis, the statement of basis, under the "Construction and Permitting History" section, states: "To facilitate review of the facility's construction and permitting history, a complete copy of the most recent Engineering Evaluations for each permitted piece of equipment at the refinery is included..." In other words, if a piece of equipment has gone through modification since initial construction, we would only have the engineering evaluation for the most recent modification available to review, which may not have the information we need to review applicability determinations.

For instance, in trying the review whether NSPS Subpart J should apply to flare C891, we have looked to the engineering evaluation provided in the CD attached to the statement of basis. The permit only provides one application number for this flare, A/N 383365. This application was submitted in 2001, and is for a modification, rather than initial construction. The engineering evaluation accompanying this application does not indicate the date of construction, nor does it discuss NSPS Subpart J applicability. Important questions to have answered in the statement of basis include: When was this unit constructed? If it was constructed after June 11, 1973, why isn't it subject to NSPS Subpart J? If it was constructed before June 11, 1973, how does the 2002 modification that is the subject of A/N 383365 affect applicability of NSPS Subpart J?

condition so that it is clear that this CEMs must meet the requirements of the NSPS (see Comment 12, below).

4. NSPS QQQ

- A. NSPS Subpart QQQ is an applicable requirement for several emission units at the facility. The Subpart QQQ requirements appear to be imposed on the facility exclusively by subpart-level references in conditions H23.5 and H23.18. This level of detail makes it difficult to determine what specific requirements apply to each unit. For example, 60.692-3 (Standards: Oil-water separators) requires a closed vent system and control device for each separator tank or piece of auxiliary equipment with a certain design capacity. Because the design capacity of a unit is not always apparent, it is difficult to tell by looking at the permit whether this requirement applies to a given unit. The oil-water separator (D680) is required by Condition E336.8 to be connected to the wastewater air pollution control system. However, that requirement is tagged only with the District's BACT rule so it is still unclear whether the incinerators are actually required by the NSPS.

Control devices required pursuant to 40 CFR 60.692-3(b) must meet a specific control efficiency or operate with a specified minimum residence time and temperature. The permit is lacking control requirements that satisfy the NSPS but because of the inadequate level of detail in the permit, it is not possible to determine whether the requirements are not applicable or if their absence is due to an oversight by the District. In an attempt to resolve this issue, EPA asked the District via e-mail to clarify whether any emission units at the facility were subject to the control requirements under 40 CFR 60.692-3(b). The District responded by indicating that it should have the information within a few days. The District's own inability to determine which requirements apply to the facility by simply looking at the permit reinforces the notion that the permit lacks an adequate level of detail with respect to this regulation.

The example discussed above is not the only instance in which clarification is needed. In addition to the standards of 60.692-2 and 60.692-3, the NSPS contains alternative standards that may be used for individual drain systems, oil water separators, slop oil tanks, storage vessels, and other auxiliary equipment. In cases where a regulation contains multiple compliance options, the permit must clearly indicate which compliance option the facility has selected. If the facility desires the flexibility to use multiple options, any alternatives should be incorporated into the permit as alternative operating scenarios and the Permittee should maintain a log to record which option is utilized at any given time. For guidance on the use of alternative operating scenarios, the District is referred to the May 20, 1999 letter from John Seitz to Mr. Robert Hodanbosi and Mr. Charles Lagges regarding title V interface issues.

To resolve this issue, the District should provide a detailed discussion of the applicability of Subpart QQQ in the statement of basis and the requirements of Subpart QQQ must be incorporated into the permit in great enough detail to determine which specific requirements apply to each affected emission unit. The District is reminded that it may still be appropriate to incorporate certain requirements into the permit by reference to Subpart QQQ. However, any references used must be specific enough to define how the applicable requirement applies to each unit at the facility and provide for practical enforceability of the regulation or applicable requirement. For a more complete discussion about the use of incorporation by reference, the District is referred to EPA's *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program*, dated March 5, 1996.

- B. If a control device is required for the oil water separator and any auxiliary equipment pursuant to 60.692-3(b), the permit appears to lack the emission standards discussed above and other Subpart QQQ requirements. If the District finds that a control device is required, the following should be added to the permit at a minimum:
- a. a condition requiring 95% control OR a minimum residence time and temperature of 0.75 seconds and 1,500 degrees F, respectively; and
 - b. a condition imposing the 500 ppm limit on the closed vent system pursuant to 60.692-5(e)(1).

The NSPS contains additional operational requirements for equipment with control devices such as the requirement to install a flow indicator pursuant to 60.692-5(e)(3) and the requirement to install a temperature monitoring device and continuous recorder pursuant to 60.695(a)(1). EPA notes that while the District may choose to incorporate these requirements into the permit by reference, the permit should still be clear about which specific requirements apply to each affected emission unit or control device.

- C. In previous conversations regarding this permit, the District indicated that the "drain system component" (D1907) identified in the equipment list includes the refinery wastewater system in its entirety. This generic grouping of individual wastewater system components may make it difficult for District and EPA enforcement personnel to determine if the refinery is in compliance with the regulation, which contains standards for individual drains, junction boxes, and sewer lines. To address this issue, EPA recommends that the District provide a detailed description of the refinery wastewater system in the statement of basis. EPA notes that SIP Rule 1176(d)(2)(C) requires the refinery to submit to the District a complete list of drain system components identifying the total number, individual location, and type of control. The District should consider summarizing this information in the statement of basis or including the refinery's Rule 1176 compliance plan as an attachment to the statement of basis.

- D. It is unclear why the skim oil/sour water sumps (D630, D638) are not subject to the requirements of NSPS Subpart QQQ. The District should review the applicability of the NSPS with respect to these devices and impose the requirements of Subpart QQQ on them or explain in the statement of basis why the NSPS is not applicable.
- E. For devices D1428 and D1437, it is unclear what the term “recovered oil” refers to and whether or not the recovered oil meets the definition of “slop oil” under NSPS Subpart QQQ. The District should provide an applicability determination for these sources in the statement of basis and incorporate any applicable Subpart QQQ requirements into the permit.

5. SIP Rule 1176

- A. Pursuant to Rule 1176(e)(2)(A) sumps and wastewater separators must be provided with (i) a floating cover, (ii) a fixed cover and closed vent system vented to a control device as specified in paragraph (e)(6), or (iii) an alternative control measure approved in writing by the EO. The permit is unclear about how ExxonMobil is required to comply with this requirement. For example, page 82 of Section D only indicates that device D680 (oil water separator) is “covered;” it does not say whether the cover is a floating cover or a fixed cover. Condition E336.8 of the permit further states that this device must be directed to the air pollution control system.

Although one might deduce that the cover mentioned on page 82 and the control device referred to in Condition E336.8 constitute a system that is meant to comply with Rule 1176(e)(2)(A)(ii), the permit does not establish a clear compliance obligation for the source. Especially in situations such as this where a rule offers more than one compliance option, the permit must be clear about which option the Permittee has selected. In the present case, the permit could benefit from a condition that explicitly requires device D680 to be equipped with a fixed cover and closed vent system that is vented to the control system serving the wastewater treatment system. In the alternative, at a minimum, the District should tag Condition E336.8 with a citation to Rule 1176(e)(2)(A)(ii) to indicate that the control system is in fact used to comply with the wastewater separator requirements of the rule. The District should follow the same procedure for other sumps and wastewater separators at the facility that are subject to the requirements of Rule 1176(e)(2).

- B. As stated above, a control device that is used to comply with sump and separator requirements of Rule 1176(e)(2)(A)(ii) must meet the requirements of paragraph (e)(6) of the same rule. Paragraph (e)(6) requires that control devices either: (A) achieve a control efficiency of 95 percent or greater, as determined by an annual performance test; (B) not emit VOC emissions greater than 500 ppm above background levels, as determined by monthly monitoring; or (C) achieve a level

of control determined by the Control Officer to be equivalent to those specified in subparagraphs (A) or (B). In telephone conversations on July 27 and July 29, 2005, the District explained that its interpretation of the rule allows facilities to switch between compliance methods at will without specifying in advance which method will be used. The District further stated that it would require a finding of simultaneous non-compliance with the requirements of paragraphs (e)(6)(A) and (e)(6)(B) before it could issue a notice of violation for non-compliance with the air pollution control device requirements of Section (e)(6). While EPA gives the District deference in interpreting its own rule, the District has an obligation to issue a permit that assures compliance with all applicable requirements. The current permit does not do so with respect to Rule 1176(e)(6) because it only contains general references to the rule and does not establish a clear compliance obligation for the source.

EPA agrees that the Permittee is entitled to choose any compliance option allowed by the rule. EPA further agrees that the Permittee should have the flexibility to switch between compliance options as necessary. However, in cases where such flexibility is given to a facility, the permit must require that the Permittee demonstrate continuous compliance with either of the options at any given time. As an example of how the permit may not establish a clear compliance obligation for the source, the District is referred to the hypothetical situation in Attachment 2.

This issue can be resolved through the use of alternative operating scenarios pursuant to 40 CFR 70.6(a)(9). Specifically, the permit could require that the facility maintain a contemporaneous log of the scenario under which it is operating. In addition, the permit would explicitly state that the Permittee must be able to demonstrate compliance at any given time with the scenario identified in the log. For example, language similar to that below provides the Permittee with operational flexibility while assuring compliance with Rule 1176. The District may, of course, develop different language that accomplishes the same objective.

Air Pollution Control devices used as a means for complying with Rule 1176(e)(2) shall meet either of the requirements in subparagraphs 1176(e)(6)(A) or 1176(e)(6)(B). Contemporaneously with making a change from one method of compliance to another, the Permittee shall record in a log at the facility a record of the scenario under which it is operating. At all times, the Permittee must maintain source test results or monthly monitoring records, as appropriate, that demonstrate compliance with the chosen option.

- C. Rule 1176(g)(1)(B) states that any operator using an APC device as a means of complying with the rule shall maintain records of system operation or maintenance that will demonstrate proper operation and compliance of the APC device during periods of emission producing activities. Because the rule is not

specific about which records must be maintained, that information should be stated in the permit. For example, the permit should say what specific records are required during the times that the Permittee chooses to comply with the 95% control requirement under 1176(e)(6)(A). For this purpose, EPA recommends maintaining records that demonstrate compliance with a minimum temperature and residence time that are shown to achieve 95% control. EPA notes that Condition C8.1 already requires the Permittee to maintain the incinerator temperature above 1200 degrees F. Provided that this temperature provides 95% control, the District could address this issue by tagging Condition C8.1 with a citation to Rule 1176 and adding a residence time requirement.

- D. For the control of drain system components (DSCs), Rule 1176(e)(7) requires petroleum refineries to comply with the additional requirements of either subparagraph (e)(7)(A) or (e)(7)(B) and it further requires the Permittee to notify the District of its choice. The proposed permit does not state with which compliance option the Permittee is required to comply. The permit lists only four conditions for the drain system components under Process 14 and none of them address this provision of the rule. The District should add a condition to the Permit requiring compliance with the option selected by ExxonMobil.
- E. It is unclear why the vacuum truck wash out sump (D1671) and skim oil/sour water sump (D630) are not subject to the requirements of Rule 1176. Pursuant to Rule 1176(e)(2), sumps must be equipped with a floating cover, a fixed cover and closed vent system routed to a control device, or an approved alternative control measure. The District should add the appropriate control, monitoring, and recordkeeping requirements to the permit for these sources or explain in the statement of basis why they are not subject to the requirements under Rule 1176.
- F. Petroleum refineries are required to prepare and submit a compliance plan pursuant to Rule 1176(d)(2). However, a plan for Rule 1176 is not included in the list of approved plans in Section I of the permit. The District should reference the plan in Section I or explain its absence in the statement of basis.

6. Basis for Tank Non-Applicability Determinations

There are dozens of tanks listed in the equipment list of Section D. Many of these are not subject to any requirements, except for the process-wide requirements of the Benzene Waste Operations NESHAP, Subpart FF (see comment 8, below). Tanks at a petroleum refinery can be subject to a wide number of regulations, depending on a number of different factors, such as size, capacity, physical properties of materials stored, and date of construction. While the table of tanks included in the statement of basis is somewhat useful, it does not provide information on tanks that are not subject to these commonly applicable requirements. The statement of basis should include an evaluation of the tanks and should explain why these tanks are not subject to any of the commonly applicable requirements.

For instance, for NSPS Subpart Kb, the District could include a table of non-applicability, with 3 columns that can potentially account for non-applicability: 1. Capacity in cubic meters, 2. Storage of Volatile Organic Liquids, and 3. Date of construction. With such a table, the District could indicate which tanks fall under each category of exemption. This would help the permit engineers, inspectors, and the source keep track of why these units are not subject, in case conditions change in the future. This is particularly important for units exempt under #2 above.

SCAQMD is referred to EPA's March 15, 2005 Petition Orders for Tesoro and Valero. In response to allegations by the petitioners that the Statements of Basis and the permits for these refineries lack adequate information to support the proposed exempt status for numerous tanks, the EPA Administrator found that:

[T]he majority of sources listed [as exempt] are identified in the December 1, 2003 statement of basis along with a citation from Regulation 2 describing the basis of the exemption. For the sources that fall within this category, EPA finds that the permit record supports the District's determination for the exempt status of the equipment. However, in reviewing the December 16, 2004 Statement of Basis, EPA noted that three of the sources listed [as exempt] are not included in the statement of basis with the corresponding citations for the exemptions. For these sources, the failure of the record to support the terms of the Permit is adequate grounds for objecting to the Permit. See In the Matter of Tesoro Refining and Marketing Co., Petition Number IX-2004-06, at 43-44, and In the Matter of Valero Refining Company, Petition Number IX-2004-07, at 42-43)

In addition, both the January 7, 2002 NOD for the State of Texas, and the December 20, 2001 letter issued by EPA Region 5 to the State of Ohio indicate EPA's position that both applicability determinations and exemptions should be discussed in a statement of basis.

7. MACT Templates

A. MACT Subpart CC, Template #1, Miscellaneous Process Vents

Template #1 on page 1 of Section J of the permit contains the requirements for Miscellaneous Process Vents (MVPs) under MACT Subpart CC for petroleum refineries. In summary, for MVPs, MACT Subpart CC requires the operator to reduce organic Hazardous Air Pollutants (HAPs) by 98% or to 20 ppmv. MACT Subpart CC also contains recordkeeping and monitoring requirements for MVPs and associated control devices.

The equipment and condition list in section D of the permit indicates which process units are subject to the miscellaneous process vent provisions of MACT Subpart CC. Because SCAQMD commendably also lists how each device is

connected, we can also see which control device is being used to comply with the limits of MACT Subpart CC.

SCAQMD has indicated in phone calls that streams from miscellaneous process vents are introduced into the flame zone of heaters used to comply with the miscellaneous process vent requirements of MACT Subpart CC. MACT Subpart CC exempts such units from monitoring and source testing. It is our understanding that only heaters are used to comply with the requirements of MACT Subpart CC, and that vent streams are introduced into the flame zone of all of the heaters used to comply with MACT Subpart CC.

However, neither the permit nor the statement of basis discusses whether the vent stream is introduced directly into the flame zone of these heaters. Because this information is not readily available in the permit, we believe the statement of basis should at least discuss the applicability determination made with respect to the monitoring and source testing requirements for the heaters, pursuant to the guidance on applicability determinations for federal requirements contained in the January 7, 2002 NOD for the State of Texas, and the December 20, 2001 letter issued by EPA Region 5 to the State of Ohio.

Additionally, MACT Subpart CC template #1 includes requirements for flares, and for monitoring requirements for incinerators. These requirements do not appear to be applicable to any units at ExxonMobil. If these requirements are not applicable to any units then they should either be removed from the template, or else the permit should clearly indicate which parts of the template affected units are subject to. For instance, for heaters D232 and D234, the equipment list should indicate that the units are subject to MACT Subpart CC, template 1, parts 1 and 2c. For dryer D176, the permit should indicate that the unit is subject to MACT Subpart CC, template #1, parts 1, 2a, and 2d. While it is possible to piece together information to make an educated guess about which parts of MACT Subpart CC applies to each unit, title V is intended to clearly indicate what a source must do to comply with the Clean Air Act. This goal of title V benefits agency inspectors, the public, and the source.

8. Inadequate Level of Detail for Benzene Waste Operations NESHAP, Subpart FF and other applicable requirements

A. NESHAP FF

Process-wide permit condition P13.1 in Section D of the permit indicates that all of the equipment at 15 of the refineries' processes is subject to the requirements of NESHAP Subpart FF for Benzene Waste Operations. Section H of the permit also contains units subject to NESHAP Subpart FF. The equipment and conditions table for these units contain a 500ppm limit pursuant to Subpart FF and cites to

condition H23.24, which states that several specific units are subject to the applicable requirements of Subpart FF.

Nowhere in the permit does SCAQMD specifically describe which requirements of the NESHAP apply to which units, other than stating a 500ppm limit in the equipment and conditions table. This high level of detail for a standard with several different compliance options, and one that applies to so many different pieces of refinery equipment is inadequate. For example, for tanks, §61.343(a)(1) requires that the operator install a fixed roof and closed vent system that meet certain requirements, including a requirement that the cover and all openings be designed to operate with no detectable emissions as indicated by a reading of less than 500ppmv above background and that each opening be maintained in a closed, sealed position pursuant to §61.343(a)(1)(i)(B). However, §61.343(a)(1)(i)(B) does not apply to any opening if the cover and closed vent system operate such that the tank is maintained at a pressure less than atmospheric, provided that, among other things, the pressure is monitored continuously. As proposed, the permit is unclear as to whether ExxonMobil is complying with §61.343(a)(1)(i)(B), or §61.343(a)(1)(i)(C). This information is necessary for inspectors to be able to determine if ExxonMobil is complying with NESHAP FF requirements for tanks.

In the March 15, 2005 petition order regarding the title V permit for Tesoro Refining in Martinez, CA, EPA addressed a claim that Tesoro's permit failed to include the requirements of 40 C.F.R. Part 61, Subpart FF in any unit-specific tables, making the compliance obligations of the facility unclear. *See In the Matter of Tesoro Refining and Marketing Co.*, Petition Number IX-2004-06, at 8-9.

With the exception of two requirements for closed-vent systems and bypass lines in Table VII -CF, the requirements of NESHAP Subpart FF appeared in Tesoro's permit only through section-level references in a table of facility-wide applicable requirements. In the petition order, EPA determined that this method of incorporation by reference without regard to the individual emission units that are subject to the regulation rendered the permit unenforceable as a practical matter and incapable of meeting the Part 70 standard that it assure compliance with all applicable requirements.

While the ExxonMobil permit does indicate, at least in Section H of the permit, which units are subject to NESHAP FF, there is no indication of which parts of FF apply to which units, nor are the requirements spelled out in the permit. Given the complexity of the NESHAP and the refinery, it is impossible to determine from the permit how the regulation applies to ExxonMobil. This ambiguity and the applicability questions it creates render the permit unenforceable as a practical matter. In addition, the lack of detail detracts from the usefulness of the permit as a compliance tool for the facility.

SCAQMD should revise the permit requirements related to the NESHAP, keeping in mind EPA's guidance in *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program* (March 5, 1996). According to White Paper 2, at a minimum, a permit must explicitly state all emission limitations and operational requirements for all applicable emission units at the facility. Permitting authorities may reference the details of those limits and other requirements rather than reprinting them in permits provided that (i) applicability issues and compliance obligations are clear, and (ii) the permit contains any additional terms and conditions necessary to assure compliance with all applicable requirements. In all cases, references should be detailed enough that the manner in which the referenced material applies to the facility is clear and is not reasonably subject to misinterpretation. We recommend that SCAQMD develop a template similar to the templates used for MACT Subparts CC and UUU in Section J.

B. Other applicable requirements

Similarly, many other requirements in the ExxonMobil permit are included with such a broad level of detail that it is impossible to determine how they apply to the facility. See, for example, comment 5 above, regarding Rule 1176. SCAQMD should evaluate the rules cited in conditions H23.1 through H23.32 on pages 236-244 of Section D of the permit to determine if additional detail is needed, keeping in mind comments 4A and 8A.

9. Electrostatic Precipitators (ESPs)

A. Condition C12.1 requires continuous monitoring of the voltage, current, and spark rate at each ESP field for devices C165 and C166. The condition further states, "if the daily average ESP total power input falls below the level measured in the most recent source test which demonstrated compliance with the emission limit, a source test shall be performed within 90 days at the new minimum daily average ESP total power level." EPA has the following concern with this requirement:

- The 90-day source test requirement is triggered in part by operation outside of the parameter range measured during the most recent source test that "demonstrated compliance with the **emission limit**." The ESPs and the emission units they serve have multiple emission limits, some of which depend on process rates that may vary from source to source. As a result, the permit is unclear about which limits the minimum power value is based upon and when the source test requirement would actually be triggered.

To address this issue, the permit should explicitly state what the minimum power requirement is. EPA understands that the minimum power requirement has not yet been established and will be based on the results of an initial source test. Once that test has been conducted and the minimum power requirement has been

determined, the specific value should be added to the permit. Prior to the source test, the District should add a power requirement to the permit that is based on the design of the control devices.

- B. Condition D29.3 requires that the Permittee conduct an annual performance test for PM emissions but it does not say with which limits the test is intended to demonstrate compliance. The District should clarify this by either referencing the rules or emission limits in the condition itself or by citing the underlying applicable requirements in the condition's tag. In addition, the condition states that the test should be performed at the outlet of the SCR. Please consider whether the District intended for the test to be conducted at the outlet of the ESP rather than the SCR.

10. Missing Periodic Monitoring for Generally Applicable Requirements

There are several units that are subject to the generally applicable requirements of Rules 401, 404, 405, 407, and/or 409. Rule 401 prohibits the discharge from any source of any air contaminant as dark or darker in shade as Ringelmann No. 1 for any period or periods aggregating more than three minutes in any one hour. Rule 404 limits particulate matter concentration from any source. Rule 405 limits solid particulate to no more than 0.23 kilogram per 907 kilograms of process weight. Rule 407 limits CO and sulfur emissions from any equipment, and Rule 409 limits the concentration of contaminants from the burning of fuel. Because these rules impose no monitoring of a periodic nature, 40 C.F.R. § 70.6(a)(3)(i)(B) specifies that the permit must contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit."

The statement of basis for the ExxonMobil permit states that the SCAQMD relied on the SCAQMD Periodic Monitoring Guidelines for Title V Facilities (1997), the CAPCOA/CARB/EPA Region IX Periodic Monitoring Recommendations for Generally Applicable Requirements in the SIP (1999), and the CAPCOA/CARB/EPA Region IX Recommended Periodic Monitoring for Generally Applicable Grain Loading Standards in the SIP: Combustion Sources (2001) for making periodic monitoring decisions. For many units in the permit there appears to be no periodic monitoring included for assuring compliance with the limits of these rules. Please note that the January 7, 2002 NOD for the State of Texas and the December 20, 2001 letter issued by EPA Region 5 to the State of Ohio indicate that periodic monitoring determinations should be discussed in the statement of basis. Additionally, EPA's petition orders for the Los Medanos Energy Center (May 24, 2004) and for the Chevron, ConocoPhillips, Tesoro, and Valero refineries (see Petition Numbers IX-2004-06 through 09) reiterate the need for periodic monitoring determinations to be included in a statement of basis (see, for instance, *In the Matter of Chevron Products Company*, Petition Number IX-2004-08, at 18-25).

- A. *No monitoring for compliance with Rule 401*
Most units

Rule 401 is incorporated into the permit as a facility-wide condition, such that it applies to all emission units at the refinery. However, there is no monitoring specifically included in the permit to assure compliance with Rule 401. While a handful of units are subject to visible emissions (VE) monitoring, it is not clear whether this monitoring is pursuant to Rule 401, or to some other requirement, such as an NSPS (see comment 13). As such, it is unclear whether SCAQMD has made an active decision that all other units do not need to be monitored to assure compliance with Rule 401, or if the units subject to VE monitoring are simply required to be monitored pursuant to some other rule or requirement.

According to SCAQMD's 1997 Periodic Monitoring Guidelines, SCAQMD has grouped sources as either category I sources, which do not require periodic monitoring to assure compliance with Rule 401, and category II sources, which do require periodic monitoring for compliance with Rule 401. The permit would benefit from having a discussion of category I and II units in the statement of basis, as some periodic monitoring decisions remain unclear to EPA.

For instance, combustion equipment, exclusively landfill, digester, refinery or natural gas-fired, which never encounter dirty, oily, or contaminated materials and which do not require PM or PM10 control are grouped as category I sources for which no monitoring is needed. CO Boiler Unit C164 fires on natural gas, waste heat, and refinery gas, initially indicating that it is a category I source. The permit does not require any periodic monitoring to assure compliance with Rule 401. However, the permit indicates that this unit is hooked up to two electrostatic precipitators, indicating that this unit requires PM or PM10 control. If this unit does require PM or PM10 control, then it appears that the permit is missing periodic monitoring for compliance with Rule 401.

Also, SCAQMD's 1997 guidance includes fuel oil or gasoline fired IC engines as a category II source requiring periodic monitoring for compliance with Rule 401. The permit for IC engines D394, D1686, and D1786 indicates that these units fire on diesel fuel, however, no periodic monitoring is included in the permit to assure compliance with Rule 401. This appears to contradict the SCAQMD's 1997 guidance, and the statement of basis offers no insight as to the decision making employed by SCAQMD for these units. Similarly, incinerators are included as a category II source in the 1997 Guidance, but the permit does not include periodic monitoring for Rule 401 for incinerators, such as C686 and C687. Additionally, tanks storing solid material are also included as a category II source, however for many tanks the permit does not indicate what type of material is stored.

SCAQMD should discuss periodic monitoring decisions made for Rule 401 in the statement of basis, since as currently drafted, the permit does not clearly implement the guidelines of SCAQMD's 1997 Guidance.

B. No monitoring for compliance with Rule 404

Units D83, D84, D85, D120, D917, D918, D920, D269, D270, D949, D950, D367, D927, D928, D929, D930, D931, D1403, and D833

Units D83, D84, D85, D120, D917, D918, D920, D269, D270, D949, D950, D927, D928, D929, D930, D931, and D1403 are heaters and, according to the permit, are fired on natural gas and refinery gas. Unit D833 is an infrequently operated heater fired on natural gas and refinery gas. Unit D367 is a furnace at the hydrogen plant that fires on liquefied petroleum gas, natural gas, and refinery gas. The permit indicates that these units are all subject to the PM limits of Rule 404, however, the permit does not appear to include any periodic monitoring requirements to assure compliance with Rule 404 for these units, nor does the permit appear to justify the lack of periodic monitoring.

The SCAQMD's 1997 Guidelines recommend for all sources subject to Rule 404 that compliance be determined through the following:

- Engineering calculation by the use of appropriate emission factors,
- Equipment limitation,
- Process throughput limit and recordkeeping,
- Requirement to vent the equipment to a control device meeting the monitoring requirements in Appendix A.

The permit for these units does not appear to implement any of these measures. If engineering calculations were used please document this in the statement of basis.

The CAPCOA/CARB/EPA 1999 Recommendations only address periodic monitoring to evaluate compliance with grain loading standards with respect to stack and fugitive emissions from material handling units, not combustion sources. The 2001 Recommendations address certain types of combustion units - specifically, combustion units fired on natural-gas, landfill-gas, and digester-gas. The 2001 Recommendations do not specifically address combustion units that fire on refinery fuel gas or liquefied petroleum gas. The 2001 Recommendations note that periodic monitoring for source categories that are not included (such as refinery-gas fired combustion units) should be determined on a case-by-case basis.

Based on a review of the statement of basis, the permit, and the guidance documents relied on by South Coast in making periodic monitoring decisions, we believe that SCAQMD's apparent decision to not require periodic monitoring for these units for Rule 404 has not been justified. Please add appropriate periodic monitoring, or explain in the statement of basis why no monitoring is needed.

- C. *No monitoring for compliance with Rule 405*
Units D57-D62, D86-D91; D129-D135 and D919

Units D57-D62, and D86-D91 are coke drums; Units D129-D135 and D919 are conveyors and screens. The permit indicates that these units are subject to the PM process weight limits of Rule 405; however, the permit neither includes periodic monitoring nor explains the lack of periodic monitoring for the PM process weight limits of this rule. Please add monitoring to the permit for these units, or explain in the statement of basis why none is needed.

- D. *No monitoring for compliance with Rule 407- CO*
Units D367, D926, C891, C892, C894, and C1558

Unit D367 is a furnace at the hydrogen plant that fires on liquefied petroleum gas, natural gas, and refinery gas. Unit D926 is a turbine fired on butane, liquefied petroleum gas, natural gas, and refinery gas. Units C891, C892, C894, and C1558 are flares. The permit indicates that these units are subject to the CO limit of Rule 407. However, the permit neither includes periodic monitoring nor explains the lack of periodic monitoring for the CO limit for these sources.

The SCAQMD's 1997 Guidelines recommend the following gap-filling monitoring, testing, and/or recordkeeping for sources subject to the CO limit of Rule 407:

- None for equipment:
 - Where CO emissions are not expected; or
 - Subject to CO emission limits and requirements of source-specific rules in Regulation XI (e.g. Rule 1146, 1146.1)
- Equipment \geq 10 million BTU/hr heat input rating:
 - CEMS for CO pursuant to 40 CFR Part 60 Appendix B & F; or
 - Performance test once every 5 years; or
 - Annual monitoring of exhaust stack for CO using an AQMD-approved portable analyzer; or
 - Parametric monitoring correlated with a performance test
- Other equipment: AQMD-approved portable CO analyzer once every 5 years

Neither the permit nor the statement of basis contains any analysis of the likelihood of these units emitting CO, nor does the permit indicate that these units are subject to the requirements of Rules 1146 or 1146.1.

The CAPCOA/CARB/EPA Periodic Monitoring Recommendations do not address monitoring for CO limits.

Based on a review of the statement of basis, the permit, and the guidance documents relied on by South Coast in making periodic monitoring decisions, we believe that SCAQMD's apparent decision to not require periodic monitoring for these units for the CO limits of Rule 407 has not been justified. Please add appropriate periodic monitoring, or explain in the statement of basis why no monitoring is needed.

*E. No monitoring for compliance with Rule 407- SOx
Units D1943, D671, D653, D654, D1375, D644, D645, D1503, D1504, D1505,
and D1507*

Unit D1943 is a sulfur condenser and units D671 and D1375 are parts of sulfur pits. Units D653 and D654 are Amine contactor vessels. Units D644 and D645 are loading arms. Units D1503, D1504, D1505, and D1507 are holding tanks at the rail car loading rack. The permit indicates that these units are subject to the SOx limit of Rule 407. However, the permit neither includes periodic monitoring nor explains the lack of periodic monitoring for the SOx limit for these sources.

The SCAQMD's 1997 Guidelines recommend the following gap-filling monitoring, testing, and/or recordkeeping for sources subject to the SOx limit of Rule 407:

- None for equipment:
 - Where SOx emissions are not expected; or
 - Subject to SOx emission limits and requirements of source specific rules in Regulation XI; or
 - Burning fuels subject to fuel sulfur limits of Rules 431.1, 431.2 or 431.3 where no other sulfur containing material is introduced to the equipment or the process
- Equipment with high potential SOx emissions:
 - CEMS for SOx pursuant to 40 CFR Part 60 Appendix B & F; or
 - Performance test once every 5 years; or
 - Annual monitoring of exhaust stack for SOx using an AQMD-approved portable analyzer; or
 - Parametric monitoring correlated with a performance test
- Other equipment: AQMD-approved portable SOx analyzer once every 5 years

Neither the permit nor the statement of basis contains any analysis of the likelihood of these units emitting SOx, though a number of these units are located at the sulfur plants. Nor does the permit indicate that these units otherwise meet

the criteria for a no monitoring needed determination pursuant to the SCAQMD 1997 Guidelines.

The CAPCOA/CARB/EPA Periodic Monitoring Recommendations do not address monitoring for SOx limits.

Based on a review of the statement of basis, the permit, and the guidance documents relied on by South Coast in making periodic monitoring decisions, we believe that SCAQMD's apparent decision to not require periodic monitoring for these units for the SOx limits of Rule 407 has not been justified. Please add appropriate periodic monitoring, or explain in the statement of basis why no monitoring is needed.

F. No monitoring for compliance with Rule 409

Units D83, D84, D85, D120, D917, D918, D920, D269, D270, D949, D950, D367, D927, D928, D929, D930, D931, D1403, and D926

Units D83, D84, D85, D120, D917, D918, D920, D269, D270, D949, D950, D927, D928, D929, D930, D931, and D1403 are heaters and, according to the permit, are fired on natural gas and refinery gas. Unit D367 is a furnace at the hydrogen plant that fires on liquefied petroleum gas, natural gas, and refinery gas. Unit D926 is a turbine fired on butane, liquefied petroleum gas, natural gas, and refinery gas. The permit indicates that these units are all subject to the PM limits of Rule 409, however, the permit does not appear to include any periodic monitoring requirements to assure compliance with Rule 409 for these units, nor does the permit appear to justify the lack of periodic monitoring.

The SCAQMD's 1997 Guidelines recommend for all gaseous and liquid fueled sources subject to Rule 409 that compliance be determined by engineering calculations, the use of appropriate emission factors, and exhaust characteristics.

The CAPCOA/CARB/EPA 1999 Recommendations only address periodic monitoring to evaluate compliance with grain loading standards with respect to stack and fugitive emissions from material handling units, not combustion sources. The 2001 Recommendations address certain types of combustion units - specifically, combustion units fired on natural-gas, landfill-gas, and digester-gas. The 2001 Recommendations do not specifically address combustion units that fire on refinery fuel gas or liquefied petroleum gas. The 2001 Recommendations note that periodic monitoring for source categories that are not included (such as refinery-gas fired combustion units) should be determined on a case-by-case basis.

Based on a review of the statement of basis, the permit, and the guidance documents relied on by South Coast in making periodic monitoring decisions, we believe that SCAQMD's apparent decision to not require periodic monitoring for these units for Rule 407 has not been justified. Please add appropriate periodic monitoring, or explain in the statement of basis why no monitoring is needed. If,

pursuant to SCAQMD's 1997 Guidelines, engineering calculations can be used to justify that no periodic monitoring is necessary, please include the results of these calculations, and compare calculated emissions to allowable emissions under Rule 409. Any emission factors, exhaust characteristics, or other assumptions or inputs used to justify no periodic monitoring should be identified in the discussion.

11. Potentially Inadequate Periodic Monitoring for Generally Applicable PM Requirements

For most units where the permit does require periodic monitoring for Particulate Matter, the requirement is a source test once every 3 years. Because the regulatory basis for these monitoring requirements is listed as periodic monitoring pursuant to Rule 3004, the District's periodic monitoring rule, it is unclear if the monitoring requirements described are even intended to demonstrate compliance with the generally applicable PM limits, or if they are intended to demonstrate compliance with something else entirely (see comment 13, below). Assuming that the periodic monitoring for PM in the permit is intended to show compliance with the generally applicable PM limits, we are concerned that the monitoring required may be inadequate, depending on the type of gas the unit is firing on. For example, most of the combustion units at the refinery fire at least occasionally on refinery fuel gas. Depending on the sulfur content of the fuel, more frequent monitoring may be appropriate. Because the 2001 CARB/CAPCOA/EPA Periodic Monitoring Recommendations do not specifically address combustion units that fire on refinery fuel gas or liquefied petroleum gas, the conclusions drawn that no periodic monitoring is needed for units firing on certain types of gaseous fuels cannot be automatically extended to units firing on refinery gas. A case-by-case determination should be made, and should be documented in the statement of basis.

12. Missing Generally Applicable Requirements

Rules 401, 404, 405, and 407 should apply generally to almost all units at ExxonMobil; however, only Rule 401 is listed as a facility-wide applicable requirement in the permit (see Condition F9.1). It appears the Rule 407 SO_x limits are missing from many combustion units that are listed as being subject to Rule 404, and to the CO limits of Rule 407. However, any combustion equipment that is expected to emit PM is also likely to emit SO_x as well. The statement of basis should discuss the SCAQMD's applicability determinations for Rule 407. There are also relatively few units subject to the PM Process Weight limits of Rule 405. Process weight limits should be particularly relevant to any combustion unit for which the District is including Rule 404 PM limits as applicable requirements. SCAQMD has indicated in a conference call that Rule 405 limits only apply if there is a potential for solid PM emissions from a unit. The statement of basis should discuss this, and should describe the process used to determine which units that would be expected to emit PM subject to Rule 404, would not be expected to emit PM subject to Rule 405.

Please note also, Unit E1901 is used in the permit as a generic grouping of the refinery cooling towers. It is unclear why Rules 404 and 405 are not identified in the permits as applicable requirements for these sources. Furthermore, periodic monitoring may be necessary to assure compliance with the emission limits depending on the operational characteristics of each unit.

EPA recently addressed the issue of cooling tower monitoring for requirements such as these in response to public petitions concerning two petroleum refineries in the Bay Area. In brief, the Bay Area Air Quality Management District determined that generally applicable grain loading and solid particulate matter rules similar to SCAQMD Rules 404 and 405 applied to the cooling towers but that monitoring was not necessary to assure compliance because the calculated emissions were well below the regulatory limits. The District's decision was based on emission calculations that used operational data from the cooling towers and AP-42 emission factors. EPA found in some cases that the District's calculations adequately justified the absence of monitoring, particularly with respect to the grain loading standard due to the relatively high exhaust air flow rates from the cooling towers. However, with respect to the lb/hr solid particulate matter emission limit of BAAQMD Rule 6-311, EPA found that some of the cooling towers have the potential to exceed the emission limit and that periodic monitoring is necessary. Thus, EPA granted the petitions on this issue. See *In the Matter of Tesoro Refining and Marketing Co.*, Petition No. IX-2004-6, at 33-35, (March 15, 2005) and *In the Matter of Valero Refining Co.*, Petition No. IX-2004-07, at 34-36 (March 15, 2005).

The District's failure to identify Rules 404 and 405 as applicable requirements (or demonstrate that they are not applicable) and conduct a periodic monitoring evaluation represents a deficiency in the permit that must be corrected. To address this issue, the District should first identify Rules 404 and 405 as applicable requirements for the cooling towers or demonstrate in the statement of basis why the rules do not apply to these sources. In addition, the District should conduct a periodic monitoring evaluation and add monitoring to the permit as necessary, taking the petition orders into account.

13. Regulatory Basis for Periodic Monitoring

Often when the District uses its periodic monitoring authority under Part 70 to require monitoring to assure compliance with an applicable requirement, the only regulatory citation included in the permit condition is a citation to Rule 3004(a)(4), which is the provision in the District's title V program for periodic monitoring. While this tag technically satisfies the requirement of Part 70 that each permit state the regulatory basis for each condition, it is sometimes difficult to tell with which emission limit or standard the monitoring is intended to assure compliance. This is especially problematic in cases where an emission unit has more than one limit for a given pollutant because you can not always tell if the monitoring requirement is intended to assure compliance with one of the requirements or both. In addition to providing the citation to Rule 3004, EPA recommends that the District also cite the rule with the underlying emission limit or operational standard.

14. Rule 219 Exemptions

Section D, pages 148 and 149, of the permit indicates that several units are exempt under Rule 219 from the Regulation II requirement to obtain written permits for equipment, processes, or operations that emit insignificant amounts of air contaminants. However, we believe the permit does not provide an adequate explanation of how several units listed qualify for the exemptions of Rule 219. For the units listed below, the permit or the statement of basis should provide more information regarding the District's determination that these units are exempt under Rule 219. Note that the December 20, 2001 letter issued by EPA Region 5 to the State of Ohio discusses EPA's expectation that exemptions be discussed in a statement of basis. Please also refer to Comment #5 above for a discussion of EPA's March 15, 2005 Petition Orders as they relate to providing a discussion of exemptions in a statement of basis.

*A. Equipment E1904
Coating equipment exemption*

Equipment E1904 consists of coating equipment that is listed as exempt due to infrequent use or low emissions (see Section D, page 148). However, there is no indication of which specific exemption Equipment E1904 qualifies for under Rule 219(m). SCAQMD should provide an explanation of which provision under Rule 219(m) the equipment qualifies for and, if necessary, provide documentation to demonstrate that the equipment qualifies for the exemption. For example, if a unit is being exempted under 219(m)(6)(A), document that the emissions from the equipment is 3 lb/day or less, or 66 lbs/calendar month or less.

*B. Equipment E2020
Laminating equipment exemption*

Equipment E2020 consists of laminating equipment that is listed as exempt due to infrequent use or low emissions (see Section D, page 149). However, there is no indication of whether E2020 meets the requirements for exemption under Rule 219(m)(6). SCAQMD should provide documentation to demonstrate that the equipment qualifies for the exemption in Rule 219(m)(6). For example, if a unit is being exempted under 219(m)(6)(A), document that the emissions from the equipment is 3 lb/day or less, or 66 lbs/calendar month or less.

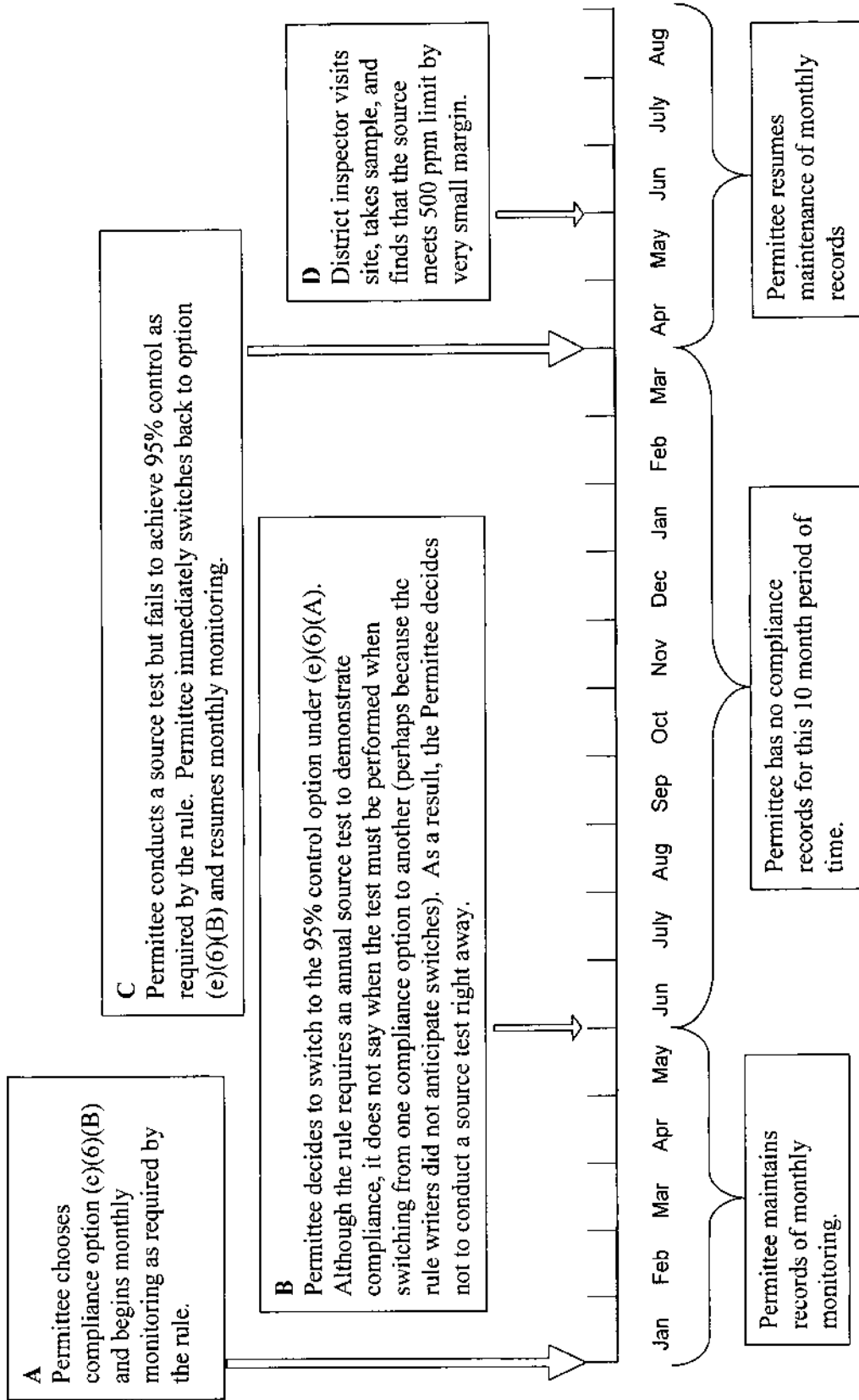
*C. Equipment E2022
Cleaning equipment exemption*

Equipment E2022 refers to cleaning equipment that is, according to the permit, exempt under Rule 219 (see Section D, page 148). However, there is no indication of which specific exemption E2022 qualifies for under Rule 219(p)(1) and whether E2022 meets the requirements for exemption under Rule 219(p)(1). SCAQMD should provide documentation to demonstrate that the equipment qualifies for the exemption in Rule 219(p)(1). For example, if a unit is being

exempted under 219(p)(1)(B)(ii), document that the emissions from the equipment is 3 lb/day or less, or 66 lbs/calendar month or less. Additionally, please verify that Equipment E2022 does not fall under any categories in Rule 219(p)(4), which would disqualify E2022 for an exemption.

Attachment 2:

Potential Compliance Problems Arising From Lack of Detail in Proposed Title V Permit With Respect to Rule 1176(e)(6)



The problem arises in this situation because although the rule requires an annual source test to demonstrate compliance with the 95% control requirement, it does not say when the source test must be conducted in the event the Permittee switches from one option to another. The Permittee's failure to conduct the test immediately upon the change in operation and its subsequent switch back to the

option under (e)(6)(B) results in a 10 month period of time in which it has no records that demonstrate compliance with either of the options. The fact that the facility failed the source test and just barely complied with the 500 ppm limit during the District's inspection creates uncertainty as to whether the facility was actually in compliance with the rule during the previous 10 month period. However, because the District inspector found the emissions to be slightly below the regulatory limit during its inspection, the District may have difficulty issuing an NOV to the Permittee for non-compliance with the rule even though the Permittee is not able to produce records that clearly demonstrate compliance.

The combination of the District's interpretation of the rule, the language of the rule itself, and the lack of detail in the permit fails to establish a clear compliance obligation for the source and could lead to a variety of situations like the one described above. While the District is entitled to its own interpretation of the rule, the District has an obligation to issue a permit that assures compliance with all applicable requirements. As it is currently written, the permit fails to do so with respect to the control requirements of Rule 1176(e)(6).

As previously stated, EPA agrees that the Permittee is entitled to choose any compliance option allowed by the rule and that it should have the flexibility to switch between compliance options as it desires. However, in such cases, the permit should contain an alternative operating scenario pursuant to 40 CFR 70.6(a)(9). The language suggested by EPA (copied below for the District's convenience) solves the problem in this hypothetical situation while still giving the Permittee the flexibility to switch control options whenever it chooses.

Suggested language:

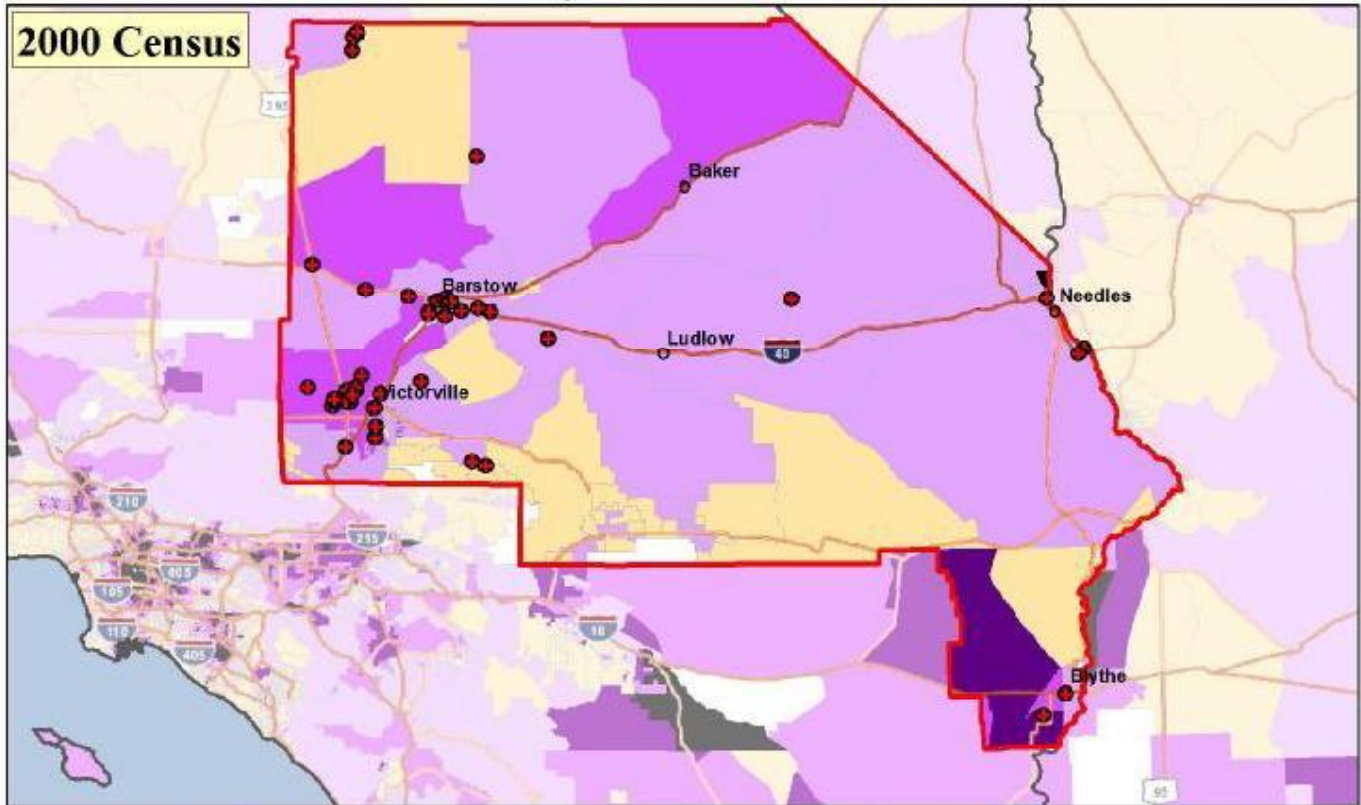
Air Pollution Control devices used as a means for complying with Rule 1176(e)(2) shall meet either of the requirements in subparagraphs 1176(e)(6)(A) or 1176(e)(6)(B). Contemporaneously with making a change from one method of compliance to another, the Permittee shall record in a log at the facility a record of the scenario under which it is operating. At all times, the Permittee must maintain source test results or monthly monitoring records, as appropriate, that demonstrate compliance with the chosen option.

Appendix E

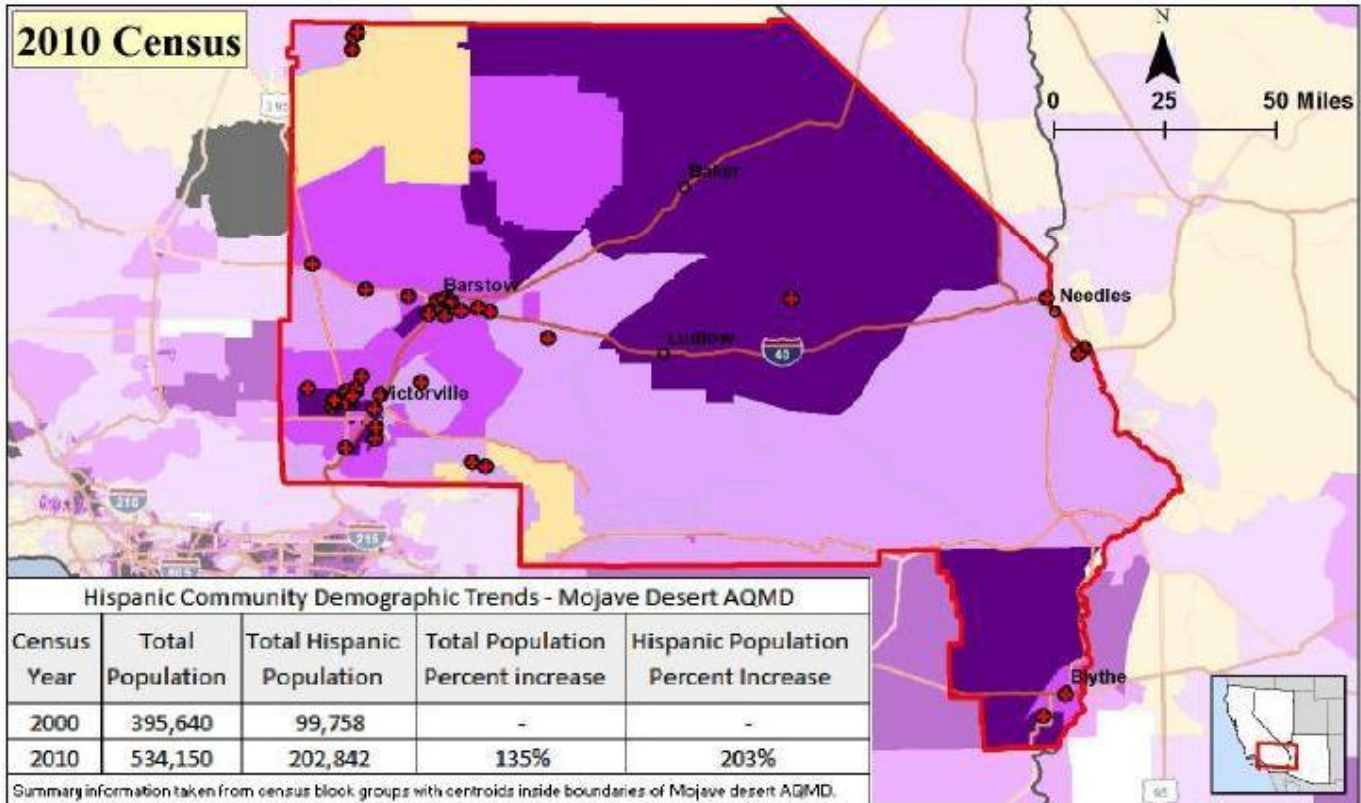
**MAP SHOWING GROWTH OF HISPANIC POPULATION IN MDAQMD'S
JURISDICTION**

HISPANIC COMMUNITY DEMOGRAPHIC TRENDS (2000-2010) MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT

2000 Census



2010 Census



Hispanic Community Demographic Trends - Mojave Desert AQMD

Census Year	Total Population	Total Hispanic Population	Total Population Percent increase	Hispanic Population Percent Increase
2000	395,640	99,758	-	-
2010	534,150	202,842	135%	203%

Summary information taken from census block groups with centroids inside boundaries of Mojave desert AQMD.

Percent Hispanic Population by Census Block group
 75 - 100%
 50.1 - 75%
 25.1 - 50%
 10.1 - 25%
 <10%
 No Population

Mojave Desert AQMD Boundary **Title V Source**



AIR-200045_3.mxd 9/5/2012

Sources: US Census Bureau (2000 & 2010), ESRI (2012), TANA (2006), Mojave Desert AQMD (2012), US EPA's Enforcement & Compliance History Online (ECHO) database (2012).

Appendix F

MDAQMD COMMENTS ON DRAFT REPORT



Mojave Desert Air Quality Management District

14306 Park Avenue, Victorville, CA 92392-2310

760.245.1661 • fax 760.245.2699

Visit our web site: <http://www.mdaqmd.ca.gov>

Eldon Heaston, Executive Director

August 23, 2012

Gerardo Rios
Chief, Permits Office
USEPA Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Re: MDAQMD Responses to Draft Title V Operating Permit Program Evaluation

Dear Mr. Rios:

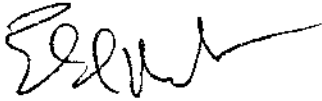
The Mojave Desert Air Quality Management District (MDAQMD or District) received the copy of the *Draft Mojave Desert Air Quality Management District Title V Operation Permit Program Evaluation* (Draft Report) on July 23, 2012. The District appreciates the time and effort spent by you and your staff reviewing the District's Title V Program. Attached please find the MDAQMD's official responses to the findings contained in the Draft Report.

I must note that there are some basic underlying problems in properly implementing a Title V program within the MDAQMD. These problems include State Implementation Plan (SIP) gap issues; district size and travel times; as well as terminology differences used by MDAQMD personnel to avoid confusion between state/local requirements and federal level requirements. In addition, the local policy directives as set forth by the District's Governing Board regarding District activities in general and permitting philosophy in specific must be considered. These issues must be understood and taken into account in developing any plan to implement improvements.

The MDAQMD remains committed to improving its Title V program. The District is seriously considering your comments and recommendations and is developing a work plan to allow us to move forward with program improvements. I look forward to working with you, your staff and other USEPA departments to address not only Title V program issues but also the underlying problems which remain as barriers to an effective and efficient Title V program within the District.

If you have any questions please feel free to contact me at (760) 245-1661 x5737 or Karen K. Nowak, District Counsel at (760) 245-1661 x6810

Sincerely,

A handwritten signature in black ink, appearing to read 'Eldon Heaston', with a long horizontal flourish extending to the right.

Eldon Heaston
Executive Director/Air Pollution Control Officer



**Responses to Findings of
USEPA's
*Mojave Desert Air Quality Management District
Title V Operating Permit Program Evaluation*
Draft report of July 23, 2012**

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Responses to Findings of USEPA's
Mojave Desert Air Quality Management District
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A. Introduction

The purpose of this document is to provide official comments of the Mojave Desert Air Quality Management District (MDAQMD or District) to the *Mojave Desert Air Quality Management District Title V Operating Permit Program Evaluation Draft Report* (Draft Report) as issued July 23, 2012 by U.S. Environmental Protection Agency Region 9. The comments are divided into two sections one to provide general overall commentary and background and the other to respond to specific findings presented in the Draft Report.

B. General Comments

From the initial content and tone of the Draft Report it is clear that USEPA did not obtain a full understanding of the District's history and current status as it relates to the implementation of the Title V Operating Permit Program during its program evaluation process. This misunderstanding can unduly color USEPA's assumptions regarding the scope, nature and approach of the MDAQMD's Title V program. The MDAQMD appreciates the opportunity to provide additional information regarding various assumptions presented in the Draft Report.

1. Population and Demographics

Initially, it must be emphasized that the MDAQMD's jurisdiction only covers the desert portion of San Bernardino County and the Blythe/Palo Verde Valley portion of Riverside County and located within the Mojave Desert Air Basin.¹ These areas are distinctly different from the highly urbanized areas of western Riverside County and south-western San Bernardino County which are located within the South Coast Air Basin (SCAB). Using population and demographic information derived from the entire counties of Riverside and San Bernardino in the Executive Summary and elsewhere in the document is misleading at best.

Population estimates for the MDAQMD's jurisdiction currently is 545,316.² The population is spread over approximately 20,000 square miles with the majority of the population density occurring in the Victor Valley which includes, but is not limited to, the City of Adelanto, Town of Apple Valley, City of Hesperia, and City of Victorville as well as adjacent unincorporated

¹ 17 Cal. Code Reg. 60109. The former Southeast Desert Air Basin was split into the MDAB and the Salton Sea Air Basin (17 Cal. Code. Reg. 60114) in 1997.

² Population figures for 2011 derived from California Department of Finance Report found at <http://www.dof.ca.gov/research/demographic/reports/estimates/e-1/view.php> .

areas. This is significantly different from the combined 4 million population base for the entire two county areas cited in the Draft Report.

In addition to its relatively small population the MDAQMD had a high degree of variation from community to community. For example, a quick search of the cities within the MDAQMD³ regarding percentage reported Hispanic ethnicity from the 2010 census ranged from a low of 15.1% in Yucca Valley to a high of 51.5% in Adelanto. . A similar search regarding language use revealed that persons reporting they spoke English “less than very well” ranged from a high of 20.4% in Adelanto to a low of 2.6% in Twenty-nine Palms. The MDAQMD expects similar ranges in unincorporated areas depending upon the particular location within its jurisdiction. The draft report makes no mention, nor does it acknowledge, this high degree of variability in demographics within the MDAQMD.

2. MDAQMD History

The District’s history is also quite a bit more complex than indicated in the Draft Report. Between the late 1959 and the initial submissions to the California State Implementation Plan (SIP) in 1972 the Southern California region was covered by several countywide air districts including ones for the entire areas of Riverside and San Bernardino Counties (RCAPCD and SBCAPCD respectively). In 1975 the Boards of Supervisors for Los Angeles, Orange, Riverside, and San Bernardino Counties formed a unified entity called the Southern California Air Pollution Control District (So. Cal. APCD) to perform air pollution control functions in the region. There were a variety of SIP submittals from this So. Cal. APCD up until the creation of the South Coast Air Quality Management District (SCAQMD) on February 1, 1997.

Unfortunately, the initial legislation which created SCAQMD contained language limiting its jurisdiction to only areas within the SCAB. Technically, this left the areas outside the SCAB still under the jurisdiction of the unified entity the powers and duties of which had been legislatively subsumed by the newly created SCAQMD. Due to the legislative confusion, the California Air Resources Board (CARB) adopted via Executive Order G-73 on February 1, 1977 to adopt and submit as a SIP revision a rulebook for each of the outlying areas namely the non-SCAB portions of Los Angeles, Riverside, and San Bernardino Counties. By its terms Executive Order G-73 of 1977 was only effective until other action was taken by the appropriate counties.

On February 22, 1977 the counties officially dissolved the So. Cal. APCD and each non-SCAB portion of Los Angeles, Riverside and San Bernardino Counties acquired the So. Cal. APCD rule book as it existed on that date. This action superseded the CARB G-73 rule book. Shortly thereafter, the California legislature modified the SCAQMD statute to allow non-South Coast Air Basin areas of Los Angeles, Riverside and San Bernardino to “opt in” to SCAQMD.⁴ Los Angeles and Riverside Counties exercised their right to “opt in” to SCAQMD while San Bernardino County declined to do so.

³ Adelanto, Apple Valley, Barstow, Blythe, Hesperia, Needles, Twentynine Palms, Victorville, and Yucca Valley.

⁴ Cal Stats. 1997, Ch 1195, pg 4005.

Therefore, from February 22, 1977 through July 1 1993 SIP submissions for the non-SCAB portions of San Bernardino County were provided by the San Bernardino County Air Pollution Control District (SBCAPCD). On July 1, 1993 the MDAQMD was created pursuant to statute.⁵ On July 1, 1994 the MDAQMD acquired jurisdiction over the Blythe/Palo Verde Valley portion of Riverside County pursuant to “opt in” provisions set out in the MDAQMD’s enabling legislation.⁶ This complex history is highly relevant to the development and implementation of the MDAQMD Title V Program and is mostly absent from the draft report.

3. SIP Gap and Applicable Requirements

The District’s complex jurisdictional history is extremely important for purposes of the Title V program due to two discrete facts. The first fact is that “Applicable Requirements” for Title V purposes include the requirements of the applicable SIP.⁷ The second fact is that SIP submissions are in effect “tied to the land”. Thus a SIP submission, when approved by USEPA, applies to the territory for which it was submitted unless it is specifically excluded in the approval documentation as published in the Federal Register. For example, a rule submitted by SCAQMD, approved by USEPA and applicable by its terms in the Blythe/Palo Verde Valley prior to July 1, 1994 would remain in the SIP for the Blythe/Palo Verde Valley after its acquisition by the MDAQMD until it was superseded by an MDAQMD submission on the same subject matter. To make things even more complicated many of the rules currently in the MDAQMD Rule Book are not the same version or in some cases even the same rules that USEPA has listed as SIP rules⁸ and thus “Applicable Requirements” for Title V purposes.

The MDAQMD currently is tracking over 531 discrete items⁹ as SIP related within the MDAQMD’s current jurisdiction. Of these items 163 have been removed from the SIP, 178 are current in the SIP and 490 are in some form of “SIP gap” status. Of the SIP gap rules, 69 are currently submitted and awaiting action by USEPA¹⁰ and 33 are older rules adopted by predecessor agencies and removed from the District Rule Book long ago. Of total tracked items, 158 are rules that were submitted by SCAQMD applicable to the Blythe/Palo Verde Valley portion of the District which have not been superseded by subsequent MDAQMD action. There are also a variety of rules that are truly in “limbo” having been submitted by SCAQMD prior to July 1, 1994 for the Blythe/Palo Verde Valley region but acted upon by USEPA until after that date but the USEPA action does not indicate whether the approval action applies to the Blythe/Palo Verde Valley or not. The MDAQMD has brought this serious problem, as well as its potential impact on the Title V program, to the attention of USEPA as early as 1994 and on numerous occasions thereafter. However, USEPA’s response to this issue has been less than helpful.

⁵ Health & Safety Code §§41200 et seq (Cal. Stats. 1992 Ch 642 §4).

⁶ Health & Safety Code §41210(c)

⁷ 42 USC 7661c(a); 40 CFR 70.2 “Applicable Requirement”(1).

⁸ This situation is commonly referred to as “SIP Gap”.

⁹ Which include most all the Rules in the District Rule Book as well as any item that currently is, or at one time was, part of the SIP within the District’s jurisdiction.

¹⁰ SIP submitted items are pursuant to USEPA guidance (USEPA, *Whitepaper For Streamlined Development of Part 70 Permit Applications* 7/10/1995, pg 12) may be listed as Applicable Requirements in the Title V Permit if they are identified as “SIP Pending”.

4. Staff Turnover and Institutional Memory

Over the last few years there has been considerable turnover in MDAQMD staffing. This turnover is directly attributable to the current society wide workforce shift caused by the retirement of the “baby boom” generation. In 2003, 14 District employees were considered “Retirement Eligible.”¹¹ As of the FY 2012 Budget there are only 4 employees in this category. Of the retirees between 2003 and 2012, 4 were from the Stationary Sources department¹² which is responsible for the drafting and issuance of permits. These 4 individuals had collectively 81 years of experience in air quality issues. In addition, one of these Engineers had served as the lead for the Title V program since its inception. The replacements for these positions, in comparison, only have 16 years of air quality experience between them. This substantial loss of institutional memory within the MDAQMD has resulted in an inability of new staff to clearly explain the interconnections between the Title V program and the underlying state level permits. The MDAQMD is well aware that a training lag exists due to staff attempting to learn multiple programs at once while still handling a full permit production workload. Due to the limited nature of staff resources within the MDAQMD, training opportunities need to be scheduled carefully and paced so as to not unduly impact overall District operations.

5. Policy Issues

As noted in the Draft Report the MDAQMD’s primary mission is to attain and maintain a healthful environment while supporting strong and sustainable economic growth.¹³ To assist in this mission the Governing Board of the MDAQMD has both formally and informally directed District staff to focus on making it as easy as possible for regulated industry to obtain and maintain complete compliance with the increasingly complex air quality regulations imposed from both the State and Federal levels. This direction results in an overall focus on simplifying and streamlining requirements wherever possible. The underlying idea is for the permit to translate the overly convoluted and in some cases byzantine multiple requirements into something easily understandable and usable by the equipment operator.¹⁴ In addition, the Governing Board, through its budgetary process and investments in technology, has indicated that the general mission is to be achieved in the most cost-effective and expeditious manner possible. This philosophy permeates all levels of District operations including the Title V Program. The draft report fails to adequately recognize the District’s Governing Board Policy mandates

¹¹ For MDAQMD budgeting purposes “Retirement Eligible” consists of those employees over 55 years old and with 15+ years of service.

¹² Colloquially referred to as “Engineers”.

¹³ See www.mdaqmd.ca.gov

¹⁴ In its simplest expression it is the intent of the MDAQMD to develop permit conditions which are clearly understandable by the person using the paint gun.

6. Title V Program Implementation

The MDAQMD's bifurcated Title V program is a direct result of the interaction between the Governing Board policy directives and the SIP Gap. Since so many of the District's rules are in a SIP gap status a single Title V permit, if integrated, would end up having two discrete sets of provisions. The "state only" conditions would end up being either duplicative or more stringent than the Federal conditions. In addition, the State only conditions would necessarily include provisions from California Airborne Toxic Control Measures (ATCMs) which, as noted in the Draft Report, are also not SIP approved. Creating such a document would not comply with Governing Board policy directives regarding clarity, simplification and usability at the operator level. It would also not be cost-effective and expeditious in that such a document would require completely scrapping the current quasi-automated permitting system for 36 Facilities and 1,249 equipment based permits.

C. Comments and Responses to Specific Findings

The following items are comments and responses to specific findings and/or notations contained in the draft report.

1. Introduction

Comment 1.1

MDAQMD Description: The District would appreciate it if a version of the MDAQMD history as set forth in the General Comments (Section B.2 above) was included in either this subsection, as part of the history subsection, or as a completely separate subsection in part 1 of the final report.

Comment 1.2

The MDAQMD Title V Program: The District requests that USPEA update the status of the permitting program to indicate that there are 36 active Title V Facilities¹⁵ in the District. Of those, 26 have been renewed at least once. 1 is awaiting final issuance,¹⁶ 2 are currently in the comment period,¹⁷ 2 are currently in progress, and 6 are awaiting the outcome of a

¹⁵ The MDAQMD has recently been informed that at least two current Title V facilities are currently examining the potential to move to synthetic minor status. It is highly probable that at least one of them will do so within the next year.

¹⁶ Issuance is being held pending agreement between USEPA and the District on actions to be taken in response to this report.

¹⁷ It is expected that these permits will also be held pending agreement between USEPA and the District on actions to be taken in response to this report.

nonattainment new source review (NANSR) action that is currently in process. The District would also like USEPA to include additional information regarding the District's overall permitting program. Specifically that the District produces, inspects and updates approximately 3167 permits¹⁸ annually covering 1042 facility locations owned/operated by 555 companies. The 36 Title V facilities collectively hold 1,249 active state level, equipment based permits. All of the active state level permits for each Title V facility can be found in state portion of the Title V permit.

2. Permit Preparation and Content

Response to Finding 2.1

The MDAQMD must note that up until recently the guidance provided by USEPA regarding the District's Title V permits has been minimal at best. While there are significant issues regarding the MDAQMD's Title V program many of them could have been corrected earlier with USEPA's assistance and guidance if such had been provided in a timely and efficient manner. This situation has been improving over the last year as USEPA's comments have become substantially more directed and helpful. The MDAQMD appreciates the time and effort put forth by USEPA staff in assisting u in this manner.

As has been noted in the General Comments (subsection B.4) the collective air quality experience of District staff has dropped dramatically over the last few years. This means that not only are staff attempting to deal with the general complexities of the ever growing number Federal and State regulations but also the specific complexities caused by the District situation in regards to the SIP (See subsection B.3). As a result staff, in some cases, was unable to assist USEPA in determining which portions of the Title V program were being implemented under different terminology and in conjunction with other activities.

The MDAQMD will work collectively with USEPA to develop and improve training for MDAQMD staff and to improve the underlying forms for the entire Title V Program. The MDAQMD encourages USEPA to continue to provide specific and directed comments on a permit by permit basis to assist in this process.

Response to Finding 2.2

The MDAQMD agrees that the Statements of Legal and Factual Basis (SLFB) as currently structured needs to be upgraded. However, once again it must be noted that specific USEPA guidance in the form of review and comment on MDAQMD Title V permits and SFLBs has been lacking until recently. In fact, the MDAQMD has received more comments on Title V Permits and SLFBs from USEPA in the last year than in all previous years of the program

¹⁸ State level permits are issued on an emissions/control unit or process line basis rather than a single, overly large permit for an entire facility.

implementation combined. The MDAQMD greatly appreciates this increased guidance and assistance.

USEPA has specifically noted that many of the alleged inadequacies in the SFLBs were carried over from the initial issuance procedure as part of the renewal process. While this is to some degree correct, it is also clear that expeditious and cost-effective renewals would be hindered if each item, regardless of whether the underlying applicable requirement has been changed or not, needed to be re-analyzed each and every time a renewal application or modification is presented. Without substantive comments from USEPA the District must assume that an item for which the applicable requirement is unchanged can be carried over into the new document.

One of the primary confusions regarding SFLBs has historically been the requirement to show “origin or basis” for each permit condition. This appears, in large part, to be superseded by the citation requirement for each condition that is located on the permit. Improvements to the permit condition citations (See *Response to Finding 2.4*) should allow the SFLB format to become more like the current state level permit “engineering evaluation” which provides the documentation and calculations regarding applicability both in general and as to specific conditions as well as explanation of items such as test method selection, units of measure, and selection of potential alternatives. The MDAQMD would like to explore the possibility of cross referencing or otherwise coordinating the Title V SFLB with the existing engineering evaluation process.

Also, in the interest of streamlining the SFLB the MDAQMD would like to explore the possibility of integrating applicability determinations for specific subsections of New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants (NSEHAP) and Maximum Achievable Control Technology Standards (MACT). As USEPA is well aware, many of these standards have very little discretion once overall applicability has been triggered. In addition, many of the facilities to which these standards are applicable have the ability and equipment necessary to perform multiple operation types regulated under the standard even if they happen to be not performing such functions at the present time. In the interest of creating operational flexibility many of these facilities have requested permit conditions for multiple operation types so that they can switch from one to another as the business necessity dictates. The MDAQMD is very concerned that a too specific reiteration of which requirements are applicable in the SFLB would inadvertently impact operational flexibility. Once again, improvements to the permit condition citations should help to address at least part of this issue.

Finally USEPA indicates that guidance documents are available for purposes of assisting in the drafting of SLFBs as well as other documents. The MDAQMD would like to note that there are over 230 documents of varying sizes and complexities in USEPA Region 7’s Title V Policy and Guidance Database. In addition, there are over 550 final decisions in the Petitions database. The Technology Transfer network contains additional documents which may or may not be duplicated in Region 7’s databases. Furthermore, there are documents which are not contained in any of these databases.¹⁹ Any or all of these documents can be cited by USEPA as an authority for a particular method, system or manner of producing particular types of permit

¹⁹ For example: USEPA letter to SCAQMD of 8/1/2005 re Proposed Exxon/Mobile Title V permit as cited in Appendix D of the report.

condition or SLFB provision. Add a rudimentary search engine to this plethora of guidance documents and finding particular and detailed guidance on a specific subject without substantial USEPA assistance is well-nigh impossible.

The MDAQMD appreciates the citations to particular guidance documents as found in this report. They will provide basic assistance in the MDAQMD's efforts to revamp its SLFB documents along with the results of this report. However, additional assistance from USEPA in the form of comments and guidance is necessary and essential to the success of this process.

Response to Finding 2.3

Given the District's focus on emissions unit by emissions unit conditions and the Governing Board policies regarding permit condition usability by the regulated entity (See subsection B.5) streamlining conditions to the lowest applicable emissions rate is standard permit writing protocol within the MDAQMD state level permits. This has been carried over into the Title V program. The MDAQMD agrees that the SLFBs need to be upgraded to be more inclusive to include evaluation of which of several overlapping requirements is the most stringent for a particular limitation. Some of this evaluation has already been performed in the state level engineering evaluation but not to the detail USEPA apparently requires. It must also be noted, however, that the SIP Gap issue (See subsection B.3) makes this analysis exceedingly time consuming and burdensome. The MDAQMD is willing to work with USEPA to attempt to balance the burdensome nature of this requirement with the need to upgrade the SLFB streamlining analysis.

The report contains several specific examples of allegedly inadequately documented streamlining in the SLFB for a variety of facilities. The MDAQMD would like to note that USEPA has not commented regarding this issue during the permit review process for any of these Title V permits. In addition, 3 of the 4 mentioned instances were produced prior to 2009²⁰ during a period where USEPA guidance to the MDAQMD in the form of comments was limited at best.

The Draft Report also takes exception to a variety of "boilerplate" language contained in the permits and allegedly not adequately explained in the SLFB. Both are instances of language identifying that any conflicts in emissions limits or requirements be resolved in favor of the more stringent limit. This language was included to allow enforcement of the most stringent applicable limit regardless of the source of such limit. Upgrading citations for each permit condition (See *Response to Finding 2.8*) will allow similar language to continue to be used to enhance enforcement and avoid confusion by regulated industry regarding potentially conflicting requirements.

²⁰ High Desert Power Project permit issued 9/18/2006; Victorville Landfill Permit issued 3/11/2007; and Riverside Cement issued 3/17/2009.

Response to Finding 2.4

The MDAQMD district policy is to produce permit conditions that are clearly understandable by and practically usable by the regulated industry at operator level. This is not achieved by mere verbatim reiterations of Federal regulation as permit condition. It is clear that the regulations underlying many applicable requirements are written in such a convoluted and incomprehensible manner that the average operator of a regulated piece of equipment would not be able to tell if compliance was being achieved. In addition, due to the SIP gap, many of the applicable requirements required to be included in the Title V permit will be less stringent and/or different than the state permit requirements. Therefore, the state level permit conditions within the District are drafted in a simplified format to take advantage of the laws of physics, mechanics and chemistry where compliance with one regulatory item will automatically result in compliance with several others.²¹ As noted earlier this is part of the rationale for the District's maintenance of separate state permits in a bifurcated program (See subsection B.6. above). To continue to comply with the Governing Board's general policies regarding usability and understandability the District intends to continue its state level permit program for Title V facilities for the foreseeable future.

The MDAQMD agrees that Title V permit conditions need to be upgraded and that source citations need to be made more specific. As part of this upgrade and in conjunction with our ongoing state level permit automation efforts the MDAQMD are in the process of adding source citations to its state level permit conditions. This should allow the state level and Title V permits to be used in conjunction and allow cross-checking for consistency.

Response to Finding 2.5

USEPA has indicated that the current broad permit shield language is ineffective. The District believes that upgrades to Title V permit conditions, citations and SLFB will eliminate this problem.

Response to Finding 2.6

USEPA indicates that the Title V permits are not currently implementing the Compliance Assurance Monitoring (CAM) Rule. The MDAQMD agrees that the CAM rule needs to be incorporated into Title V permits. However, since this omission was in the most part an error on the part of MDAQMD the District will not penalize facilities for its lack but instead request additional submissions addressing CAM applicability and requirements. The MDAQMD intends to work with USEPA and affected facilities to improve permits on an incremental basis and adjust issuance dates so that the Title V permitting workload is more evenly spread over the five year permit period.

²¹ Justifications for such simplification are often found in the District's Engineering Evaluation.

Response to Finding 2.7

USEPA would prefer reporting periods in the Title V permit to be more clearly defined. The District, pursuant to current practice, calculates reporting periods and due dates based upon the initial permit issuance date. Regulated industry has, in general, complied with the due dates as calculated. The District will eliminate this issue by adding specific dates to the Title V permit conditions as part of the upgrades noted in *Response to Finding 2.4*.

Response to Finding 2.8

The District will eliminate this issue as part of the upgrades to the Title V permit conditions, citations and SLFB as indicated in *Response to Finding 2.4*.

Response to Finding 2.9

Quality assurance and quality control for Title V permits is inconsistent. The MDAQMD will develop a protocol document to improve consistency.

Response to Finding 2.10

The September 26, 2005 amendments to the District's Title V rules were submitted to CARB on October 25, 2005 with the instruction to submit them to USEPA for approval. Apparently this submission never occurred for some reason. Until recently the District was not aware of this fact. Additional amendments, primarily to include greenhouse gas provisions, were made on February 28, 2011 and submitted to CARB for eventual submission to USEPA on March 24, 2011. The District presumes that this amendment has been submitted to USEPA.

Please note that once a rule is adopted by the District's Governing Board it becomes effective immediately for state purposes unless otherwise stated in the text of the rule. USEPA is sent an advance copy of proposed rules including those involving the Title V program. If USEPA would prefer a different effective date for a particular rule or series of rules the MDAQMD would expect to receive comments. No such comments were received on the Title V rule amendments when proposed.

The District will more closely monitor its rule submissions to ensure that Title V Amendments are submitted in a timely manner. In addition the MDAQMD would appreciate additional USEPA guidance regarding exactly which non-rule program elements require formal adoption and submission and which items do not.

3. Monitoring

Response to Finding 3.1

USEPA indicates that MDAQMD Title V permits do not include adequate periodic monitoring. This issue is a subset of the need to improve Title V permit conditions and citations in general. Such improvements will ameliorate this problem as well. Lack of specific operating parameters for particular pollution control equipment appears to be a major complaint. Unfortunately, the operating parameters for many devices vary widely depending upon the media used and the manufacturer. Bag houses, for example, are notorious for having differences in appropriate pressure ranges depending upon the composition and manufacturer of the particular bags. The District has therefore erred on the side of operational flexibility when crafting monitoring conditions.

USEPA also indicates that “gap filling” is necessary as a part of periodic monitoring to add specificity to compliance methods, frequency of testing and criteria triggering non-compliance/and investigation. Since these “gap filling” items do not have a specific applicable requirement citation the only citation reference applicable will be District Rule 204. USEPA has indicated in earlier comments that it feels that this is not an appropriate citation (See Finding 2.4).

As a side note, USEPA needs to consider that the ACG Glass permit belongs to a facility that is currently non-operational and thus it only remains as a “placeholder” permit. Any subsequent start-up of the facility would inevitably result in a Title V permit modification at which time across the board improvements would be made. It is neither cost effective or time efficient to upgrade the ACG permit at this time.

The MDAQMD will work with USEPA to improve periodic monitoring conditions as part of the overall improvement to Title V permit conditions. In addition, the District will develop some standardized “gap filling” language and citations sufficient to fulfill both District and USEPA needs.

Response to Finding 3.2

USEPA indicates that the opacity monitoring conditions are generally inadequate; however some permits contain sufficient provisions.²² The District will, in the course of examining and upgrading the permit conditions (See *Response to Finding 2.4*) adjust opacity monitoring conditions to be similar to those considered sufficient.

²² Namely Title V permit issued to CEMEX issued 3/17/2009.

Response to Finding 3.3

The MDAQMD consistently and commonly issues state level permits for CEMS devices. Thus, the requirement to have a CEMS is often found on the base equipment permit in the form of a requirement to not run the underlying equipment without the CEMS being operational. Performance standards and quality assurance provisions are also provided on the state level permits if only by reference. USEPA has indicated that it does not consider generic cross references to be adequate citation of applicable requirements. The District will work with USEPA to develop specific boilerplate language that will provide performance specifications and quality assurance procedures as set forth in 40 CFR 60 Appendices B and F.

4. Public Participation and Affected State Review

Response to Finding 4.1

Standard language has already been added to the legal notice format to inform the public of the right to petition the USEPA Administrator regarding objections to a proposed Title V permit. Similar language has been added to the notifications sent to Affected States and persons who have requested notification regarding Title V permits either generally or for a specific permit. The District is also in the process of upgrading its Website to specifically add a section regarding Title V permits, permit issuance process, and notification provisions.

Response to Finding 4.2

While the MDAQMD's demographics are changing over time the District's outreach to such groups is also changing. Unfortunately, the efforts of the District to reach and educate such groups have been met with a profoundly apathetic response. The District has modified its notices and other outreach documents to indicate that translation (primarily into Spanish) is available upon request. The District has never had such a request for a noticed document. This is not terribly surprising since a large portion of the District appears to be fluent in English.²³ However, the District has upon occasion provided translation services to permit holders and the general public relating to Notices of Violation, billing, records requests and other issues. The District will continue its outreach efforts and continue to provide translation upon request.

Response to Finding 4.3

While it is true that the District has not received comments from the general public on Title V permits the District suspects a variety of factors influence this. One factor could be the severe jobs/housing imbalance within the District. Over 50% of District residents commute over 40

²³ See Section C.1 above.

miles one way to work. Most of these commuters are traveling into the SCAB which is highly congested with correspondingly increased commute times. Another suspected factor is the physical location of the Title V facilities. Many are located in sparsely populated areas of the district with large buffer zones between the facilities and any residential areas. Others are located in highly industrialized zones, also with a significant buffer between the industrial zone and residential areas. This situation is quite a bit different than that found in highly urbanized areas such as found in the SCAB where residential and light industrial areas often share fence line with Title V facilities.

Historically, public workshops on general, relatively non-controversial subjects such as rule and plan development have been sparsely attended by the general public regardless of the amount of notice and outreach provided. However, issues of particular interest to local communities have generated large amounts of public participation.²⁴ Given this history it appears that the general public in the MDAQMD is well aware of how to participate in air related issues but that for whatever reason, is choosing not to.

The MDAQMD remains committed to providing opportunities for public participation in all of its activities and will continue its outreach efforts. The MDAQMD will examine the websites cited as examples by USEPA and will work on updating its website to better communicate Title V permit information.

Response to Finding 4.4

The MDAQMD maintains a general notice list for Title V permitting activities that includes CARB, USEPA, Affected States and adjacent air districts as well as any person who has requested notice of all Title V activities of the district. To this list is added any person who has requested notice of action for the specific facility. The MDAQMD is currently in the process of upgrading all its Standard Practices and Protocols as well as consolidating a variety of files, databases and other data into a single area of our computer servers. A protocol regarding Title V notice and a specific Title V notice database will be upgraded to ensure that notice is not only properly given but also properly documented.

5. Permit issuance, revision, renewal

Response to Finding 5.1

As mentioned previously in Comment 1.2, the MDAQMD has 36 Title V facilities. 26 have been renewed as of this date. Of the remaining Title V permits 1 is currently issue ready, 2 are in comment period, 2 are in progress and 6 almost identical permits are on hold due to the pendency

²⁴ For example: A local dog food manufacturing facility (non-Title V facility) had an odor issue which generated large amounts of public participation as did the proposed adoption of Rule 1133 – Composting Operations.

of a NANSR action.²⁵ USEPA would prefer that the MDAQMD not hold Title V permit renewals pending NANSR actions. The District is concerned about the costs both monetary and staff effort for, in effect, doubling notice and comment due to an NANSR action running separately to a Title V renewal. The MDAQMD would like to work with USEPA to develop a protocol with “cut off” dates to determine at what point the Title V permit should issue regardless of the pendency of a NANSR action.

Response to Finding 5.2

This finding appears to be a mere reiteration of the issues set forth in Finding 2.6. Please see *Response to Finding 2.6*.

Response to Finding 5.3

District records indicate a variety of significant permit modifications to Title V Permits over the life of the program.²⁶ However, it is correct that given the number of modifications relatively few have been significant modifications. This, in part, is due to the fact that many of the changes to existing Title V facilities are replacement/upgrades of previously existing equipment with similar equipment that happens to be more efficient and less emitting. These types of changes generally do not violate any applicable requirements, do not change monitoring/recordkeeping, don't change a case-by-case determination, don't lower emissions below an applicability threshold and generally are not Title I modifications. Historically the District has not considered certain BACT determinations to be a case-by-case determination when the particular BACT analysis has already been made for the particular equipment. The MDAQMD will, in the future consider any BACT analysis done pursuant to the provisions of District Rule 1303(A)(3) to be case-by-case determinations regardless of the source of the BACT analysis and therefore such actions in the future will be considered significant modifications.

USEPA suggests that NANSR and Title V notifications be run simultaneously. Due to the SIP gap this becomes difficult and unwieldy. In addition, USEPA has also indicated that the District should not “hold” Title V permit actions to wait for an NANSR determination. Simultaneous notice therefore appears to be a disfavored alternative. The District will work with USEPA to develop a protocol to clarify when NANSR determinations may be run in parallel with Title V permit modifications.

²⁵ To be specific: ACE Cogen is ready to be issued; USMCLB Barstow (Yermo) and Fiber-Care Bath are in the comment period; Mobile Pipe Wrappers and Coaters and Unlimited Performance Products are in progress; and the 6 Southern California Gas Turbines (various locations) are on hold.

²⁶ Specifically significant modifications were processed for the following facilities: Specialty Minerals – 9/22/03, 10/1/04, 1/25/06; Mitsubishi Cement – 6/14/06; MCLB Barstow (Yermo) – 8/10/00, 9/20/05; MFG – 8/17/09.

Response to Finding 5.4

The MDAMQD consistently works to issue permit modifications in a timely manner. However, SIP Gap issues as well as the necessity to coordinate with other agencies and other programs render timely issuance impossible in some circumstances. The MDAQMD will continue to attempt to issue modifications in as timely a manner as is possible.

6. Compliance

Response to Finding 6.1

MDAQMD staff will continue to review all reports and initiate compliance actions if necessary.

Response to Finding 6.2

Once again the SIP Gap issue makes inspection from the Title V permit difficult, time consuming and in many cases superfluous. In many situations compliance with the Title V permit will not necessarily be compliance with state level regulations or District rules which happen to be more stringent. The general policy directive by the Governing Board regarding usability and understandability of permits also makes the District permit the preferred document for initial inspection. However, the District will investigate additional ways to use the Title V Permit to improve inspections and develop methods to document the use of the Title V permit in the inspection context.

The MAQMD is in the process of upgrading and further automating its District permitting. This additional automation will allow and encourage the upgrading of District permits to incorporate certain Federal requirements such as NSPS, NESHAP, MACT, CAM and Periodic Monitoring when such requirements happen to be the most stringent requirement applicable to a particular emissions unit. In the interim, the MDAQMD will reference the Title V permits in the inspection context.

Response to Finding 6.3

The District is unclear regarding what exactly USEPA considers “unannounced” inspections. The MDAQMD’s jurisdiction covers over 20,000 square miles with substantial travel time necessary to access many areas of the District and certain Title V facilities located therein. In addition, some equipment at Title V facilities and in some cases the entire Title V facility,²⁷ are only intermittently operated. Governing Board policy is to be efficient with both time and money, therefore driving 3.5 hours to perform an “unannounced” inspection where equipment is

²⁷ Such as a peaker power plant.

non-operational is not an efficient use of District resources. The District is constantly improving its efficiency in scheduling and grouping inspections in similar geographic areas via its inspection scheduling program. The MDAQMD will investigate having the scheduling program randomly add additional Title V facility inspections from time to time when an inspector is working a particular geographic area that contains a Title V facility.

Please note that District compliance and other personnel are encouraged to “drop in” on Title V, and other, facilities if they happen to be in the area and see something potentially amiss. District personnel engaged in “sweeps” for unpermitted equipment or for other purposes are encouraged to visit nearby Title V facilities to inspect same or similar equipment. The District will continue this policy.

7. Resources and Internal Management

Response to Finding 7.1

The MDAQMD has mechanisms in place regarding tracking Title V labor costs. This mechanism has not been consistently used however. Direct costs such as notice costs are tracked. Indirect costs such as overhead and supplies are not tracked but once labor costs are being more consistently tracked the District can develop a standard percentage charge against overhead to be assigned for Title V. Currently program cost accounting district wide is performed manually. The District is investigating automated programs for program cost accounting and when such automated procedures are implemented the District will include the Title V program as one of the programs tracked.

Response to Finding 7.2

The MDAQMD is upgrading its training program in all areas, including the Title V program. Staffing levels and operational concerns mandate that training be spaced carefully to avoid loss of overall productivity. Due to the current economic and political climate it is also necessary to keep travel and training costs within reason to avoid an appearance of profligate spending of District funds. To maximize training budget and avoid appearance of inappropriate use of district funds, the District is exploring increased use of its technological resources to obtain additional training opportunities.

Response to Finding 7.3

The MDAQMD must remind USEPA that there is a substantial functional and technical difference between an active e-document *management* system and an e-document *storage* system. The document imaging system employed by the MDAQMD is electronic equivalent of a filing cabinet not an active e-document management system. It must also be noted that not all

District documents are currently in the system. Certain documents that are used for work in progress are not entered into the system until the final product is produced. This means that a variety of Title V renewal applications, because they are currently in the permit issuance process, may not have been entered into the system at the time of USEPA's site visit.

In addition, the District has been in the process of upgrading its document imaging system from a previous version to a new version that has substantially more search capacity and other features. All employees will have access to the new search and report generating capabilities on the new system. Due to this upgrade user training on the older version had been discontinued while training on the new version had not yet commenced at the time of USEPA's site visit. Training on the new version has commenced. The District is also diligently working to update and revise its existing document entry protocols as well as its records retention practices to ensure that documents are properly entered into the document imaging system. This upgrade, of course, is a necessary part of the shift to the new program version. Once the new practices and protocols are completely in place and active the need for on-site hard copies will be diminished if not eliminated.

8. Benefits

The USEPA concludes that the District has missed opportunities for alleged benefits of Title V permits. Due to the unique problems and situation of the MDAQMD and the policy directives of the Governing Board it is very difficult for the MDAQMD's Title V program to have any directly beneficial impact upon other District programs or operations. A comprehensive permit as defined by USEPA in the draft report will become so complex and physically large as to be unwieldy. It is not easily understandable by the operator of particular regulated equipment or by the general public. Due to SIP gap the provisions of the Title V permit are often not the most stringent requirements applicable to a particular facility. Thus, inspections using the Title V permit are duplicative at best or uninformative at worst.

Despite this, the MDAQMD does see some potential indirect benefits in more comprehensive and upgraded Title V permits and SLFB documents. Upgraded Title V documents will help identify where the SIP gap is most severe and thus direct future rule making actions. In addition, cross referencing cross checking between the Title V Permit and the District Permit will improve the enforceability of conditions for both documents. The MDAQMD will continue to look for opportunities where the Title V program improvements can be leveraged to enhance other existing District programs.

D. Conclusion

The MDAQMD looks forward to working with USEPA to address many of the issues identified in the report and to upgrading its implementation of the Title V Program.

Appendix G

MDAQMD GOVERNING BOARD LETTER



Mojave Desert Air Quality Management District

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Visit our web site: <http://www.mdaqmd.ca.gov>

Eldon Heaston, Executive Director

August 27, 2012

Kerry Drake
Associate Director
USEPA Region IX
75 Hawthorne St.
San Francisco, CA 94105-3901

Re: Draft Title V Evaluation Report on Mojave Desert Air Quality Management District

Dear Mr. Drake:

The Governing Board of the Mojave Desert Air Quality Management District (MDAQMD) appreciates the opportunity to comment on the above referenced draft report issued by your office on July 23, 2012. While specific comments have been provided by staff under separate cover the Governing Board feels that a more general statement regarding the underlying MDAQMD policy as it impacts the Title V Program is necessary.

To be specific, the Governing Board is concerned that the tone of the draft report as well as specific recommendations will potentially infringe upon the Governing Board's ability to set policy for the MDAQMD and the Executive Director/Air Pollution Control Officer's authority to direct staff to implement such policy. As you are well aware the intent of the Governing Board of the MDAQMD since its inception was to provide assistance to the regulated community in their attempt to comply with the multitude of air quality regulations in an expeditious and cost-effective manner. Simplification, streamlining and translation of the regulatory requirements into clear, concise and usable mandates is the hallmark of this policy.

Unfortunately, the Title V Program in and of itself does not tend to allow for easy simplification of requirements. Furthermore, the interpretations provided by USEPA, of the Title V requirements have often resulted in more complexity as opposed to less. Adding to that the failure of USEPA to timely and adequately address issues relating to updating the State Implementation Plan and the net result is a Title V Permit that is unduly confusing and does not contain the most stringent requirements applicable to a particular piece of equipment. Due to these facts the Governing Board has directed staff to develop a program such that the most stringent requirements are contained in the district level permits in a streamlined and comprehensible form while the Title V Permit contains the officially "federally applicable" requirements. In general, the intent was to develop a bifurcated

permitting program such that compliance with the district level permits would in general also result in compliance with the Title V permit.

The Governing Board intends to continue the bifurcated permitting program approach in the near future to ensure that its policy of maintaining a healthy environment while supporting sustainable economic growth is implemented. However, the Governing Board is also directing the Executive Director/Air Pollution Control Officer to work with USEPA to update and improve the Title V Program to the maximum extent feasible within the policy as set forth by the Governing Board.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Mitzelfelt", with a large, sweeping flourish extending to the right.

Brad Mitzelfelt
Chair
Governing Board of the
Mojave Desert Air Quality Management District

Appendix H

EPA RESPONSES TO MDAQMD COMMENTS

EPA Region 9 Responses to MDAMQD Comments on the Draft Title V Program Evaluation Report

Introduction

MDAQMD submitted extensive comments on EPA's draft Title V Program Evaluation report, which included responses to every finding, as well as additional comments. We have included the District's comments in their entirety as Appendix F in the final report. In addition, we are providing responses to the general issues and concerns raised by the District's comments.

Population and Demographics

The population data referenced in the Executive Summary to EPA's draft report were based on 2010 US census data for the entire populations for both Riverside and San Bernardino Counties. EPA understands MDAQMD's concerns regarding the population numbers found in the executive summary and has corrected the data to be consistent with the map found in Appendix E. We corrected the data using a GIS program that helped us identify those populations clearly within the boundaries of MDAQMD using the 2010 US Census data.

Fees & Expense Tracking

We acknowledge the District's commitment to improve its accounting of title V funds and we are hopeful that associated programmatic improvements will follow especially in the areas identified in this report. A critical factor for effective title V program implementation is the ability to provide adequate funding for program design and implementation. Program implementation includes, but is not limited to activities such as, inspections, enforcement, permit preparation, and outreach. Accounting of title V fees has been the subject of several Government Accounting Office (GAO) and EPA Office of the Inspector General (OIG) reports dating back to 1993.¹ As such, EPA is taking this opportunity to underscore the importance of adequately accounting for both the revenue, as well as the expenses of the title V program to ensure its vitality. This finding should be addressed in the District's workplan with specific milestones, goals, and funding to support its continued efforts. We did not make any changes in our report based on these comments.

SIP Gap

In its comments on the draft report, the District identifies the "SIP Gap" as a significant issue that negatively impacts implementation of the title V program. However, it is not clear that the District and EPA use this term in the same way; so it may be helpful to review what EPA considers to be the SIP Gap for title V permitting purposes and what the current gap actually consists of for MDAQMD.

¹ See, for example, the 1993 GAO report found on the internet at <http://www.gao.gov/assets/160/153161.pdf>, as well as the 2005 OIG report found on the internet at <http://www.epa.gov/oig/reports/2005/20050309-2005-P-00010.pdf>.

In the context of title V permitting, a SIP gap occurs when a district adopts a new rule that applies to title V sources, or revises an existing rule that applies to title V sources, and submits the rule to EPA for approval into the SIP. Between submittal and SIP approval there is a difference between the district's current rules and the applicable SIP, and the two sets of overlapping applicable requirements must be reconciled in the title V permitting process. At a minimum, to satisfy the requirements of the title V program, the permitting authority must ensure that the title V permit assures compliance with all applicable requirements in the SIP rule. If the current local rule is more stringent than the SIP-approved version of the rule, the permitting authority may, with the permittee's consent, make applicable requirements from the local rule federally enforceable in the title V permit. If the current local rule is less stringent than the SIP-approved version of the rule, the title V permit must still assure compliance with the current SIP-approved rule.

In response to the District's comments, EPA reviewed our current list of rules submitted by MDAQMD for incorporation into the SIP. At this time, we have 20 rules such rules awaiting further action by EPA. Only one of these rules, however, is a prohibitory rule that contains requirements that could apply to title V sources (Rule 1159, Stationary Gas Turbines, submitted to EPA on May 17, 2010). The other rules, for the most part, are permitting rules that do not directly affect title V permitting. Therefore, EPA does not view the SIP gap as a significant issue that should affect title V implementation in MDAQMD. Region 9's Air Division Rules Office is available to address the District's concerns regarding differences between the District's rules and the approved SIP.

Staff Turnover & Institutional Memory

EPA understands the challenges that MDAQMD faces with recent retirements. We believe that MDAQMD should continue its efforts to recruit and retain staff to ensure title V program success. One approach could be to use revenue from the title V program to implement a training program to replace lost staff expertise. This finding should be addressed in the District's workplan with specific milestones, goals, and funding to support its continued efforts. We made changes in our report based on these comments.

Number of Title V Sources & Permits

EPA has updated the report (Executive Summary, Introduction, and Finding 5.1) to indicate that there are 36 active title V sources in the District.

Statements of Basis

We appreciate MDAQMD's acknowledgement of the need to improve its statements of basis, as described in the District's comments on Findings 2.2, 2.3, 2.5, and 2.8, and will work with MDAQMD staff in whatever capacity the District would find useful.

As noted in Finding 2.2, in most cases MDAQMD statements of basis have not addressed periodic monitoring, CAM, the decision to grant or deny requests for permit shields, applicability determinations (including a discussion of inapplicable requirements that could reasonably be

thought to apply to the source) and exemptions, alternative operating scenarios, and decisions regarding the streamlining of multiple overlapping applicable requirements. To the extent that statements of basis produced for initial title V permits did not sufficiently address these issues, the District must address them for the first time in the renewal process.

The District refers to a “requirement” to show the origin or basis for each permit condition in the statement of basis. This statement appears to be a misunderstanding; we have not stated this as a requirement for statements of basis; it is, as the District noted, a requirement for permits.

Regarding sources that would like to have the flexibility of multiple operating scenarios, we note that the purpose of statements of basis is to provide explanations and support for decisions made in the title V permitting process. A statement of basis should explain how the permit allows for multiple operating scenarios without circumscribing that flexibility. We note that incorporating multiple operating scenarios into permits may place an extra burden on the District to assure that all applicable requirements and associated record-keeping will be included in title V permits. For this reason, the District may want to limit this practice to operations that sources reasonably expect to conduct multiple operating scenarios, rather than allowing every possible scenario regulated by the NSPS or NESHAP.

Incorporation of Applicable Requirements into Permits

EPA recognizes and appreciates the intention of the District to distill complex and often overlapping regulations into clear, concise, and complete permit conditions that owners and operators can use as a practical compliance tool. We understand that this process can be challenging at times, and we continue to recommend the guidance documents cited in Findings 2.3 and 2.4. In particular, we recommend White Paper #2, which outlines procedures for streamlining overlapping requirements in title V permits, and the section of Region 3’s Permit Writers’ Tips that describes how to translate NSPS and NESHAP standards into title V permit conditions.

As for the District’s boilerplate that simply states that the more stringent of a set of regulations applies, we reiterate that the statement of basis should explain any streamlining of applicable requirements used to draft the permit. The District may reference appropriate existing documents that compare an ATCM with a NESHAP or other federal standard. We would like to emphasize that when a state-only standard is used to assure compliance with a federal standard, the state-only standard becomes federally enforceable.

Effective Date of Title V Program Revisions

MDAQMD states that “once a rule is adopted by the District’s Governing Board it becomes effective immediately for state purposes unless otherwise stated in the text of the rule.” Under title V, program revisions must be approved by EPA before they can become effective. See 70.4(i)(2)(iv), which states that a “program revision shall become effective upon the approval of the Administrator.” We agree to work with the District so that revisions to the District’s title V rules are submitted to EPA in a timely manner, and to assure that title V permits are processed according to the latest approved title V rules.

Periodic Monitoring and Gap Filling

Both District Rule 1203(D)(1)(c) and 40 CFR 70.6(a)(3)(i)(B) require the permitting authority to include in permits periodic monitoring, testing, or record keeping sufficient to determine compliance with an applicable requirement when the applicable requirement does not directly require such monitoring (a.k.a. gap filling).

Permitting authorities, based on adequate review of physical and regulatory considerations, have discretion to determine what type and frequency of monitoring constitutes gap filling sufficient to determine compliance. Furthermore, the title V program specifically allows for alternative operating scenarios and provides means for amending or modifying existing permits. Thus the District can legitimately and enforceably design operational flexibility into its permits, provided the District's determination is justified and properly documented in the statement of legal and factual basis.

We did not intend for the District to evaluate the need for gap filling in all permits immediately; we recommend that such revisions occur when permits are renewed or revised, as stated in Findings 3.1 and 3.2.

Also, we believe the citation for gap filling provisions is District Rule 1203(D)(1)(c), which specifically requires gap filling, and not District Rule 204, which allows the Control Officer to impose conditions generally.

Use of Title V Permits for Inspections

As stated in our report, EPA recommends that permitting authorities perform Full Compliance Evaluations (FCEs) for most title V sources at least every other year. The District has considerable flexibility to determine how to perform FCEs. For example, the District may perform FCEs as a series of partial evaluations and may use specially-prepared checklists or other documents in lieu of the permit itself. Nevertheless, the basis of an FCE must be the set of all applicable requirements contained in the title V permit and the District must be prepared to demonstrate that this is the case.

Training

Use of title V fees for training on Title V permitting and implementation is appropriate and consistent with title V. Our Finding 7.2 should be addressed in the District's workplan with specific milestones, goals, and funding to support its continued efforts. We did not make any changes in our report based on these comments.

Guidance Documents

We agree that there are a large number of guidance and policy documents in the EPA Region 7 database. In addition, there are many other precedent-setting permits and legal decisions available from a variety of sources. It is our intention that our recommendations to the District to

consult particular guidance documents include clear references to particular documents listed in Appendix D or identified in our findings. If such references are unclear, we would be happy to provide more specific direction.

Conclusion

In conclusion, EPA will work with MDAQMD to prepare a workplan which addresses the findings of our report. The workplan will include specific milestones and goals to effectively address the findings. As noted during our evaluation, the success of the title V program is a cooperative effort between MDAQMD, industry, the public, and EPA. As such, EPA is committed to continue working with MDAQMD and improving its guidance and oversight that affect the MDAQMD title V program.