Arizona Department of Environmental Quality
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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Table of Contents

Glossary of Acronyms and Abbreviations 6
Executive Summary 7

1. Introduction 10

Background 10

Title V Program Evaluation at Arizona Department of Environmental Quality 11

The ADEQ Description 12

Coordination with other State of Arizona Air Pollution Control Agencies 12

The ADEQ Title V Program 13

The Arizona Management System (AMS) 14

2. Permit Preparation and Content 15

2.1 Finding: The ADEQ has a quality assurance process for reviewing draft versions of permits before they are made available for public and the EPA review 15

2.2 Finding: The ADEQ maintains template documents developed to provide direction for several elements of permit writing. 15

2.3 Finding: The ADEQ generally identifies regulatory and policy decisions in its TSDs. 17

2.4 Finding: The ADEQ staff have a clear understanding of, and the ability to correctly implement, the various title V permit revision types or tracks pursuant to the Department and federal regulations. 19

2.5 Finding: The Department has made revisions to its title V program to implement a unitary permitting program. 20

2.6 Finding: The Department generally incorporates applicable requirements into title V permits in an enforceable manner. 21

2.7 Finding: The Department references the regulatory authority for each applicable requirement in the permit conditions and includes a permit shield for these requirements. 22

3. Monitoring 23

3.1 Finding: The ADEQ successfully implements the CAM requirements. 23

3.2 Finding: The ADEQ includes sufficient monitoring to ensure compliance with applicable requirements. 24

3.3 Finding: The ADEQ developed source-specific forms for semi-annual and annual monitoring reports. 25

4. Public Participation and Affected State Review 25

4.1 Finding: The ADEQ provides public notices of its draft title V permitting actions on its website. 26

4.2 Finding: The ADEQ improved notification regarding the public's right to petition the EPA Administrator to object to a title V permit. 27

4.3 Finding: The ADEQ uses a multi-pronged approach to public participation to reach as many people as possible. For example, the ADEQ translates public notices and publications into Spanish. 27

4.4 Finding: The ADEQ's general practice is to conduct a concurrent public and EPA review. If comments are received during the 30-day public review period, the 45-day EPA review is restarted and run sequentially to the public review period, not concurrently. 28

5. Permit Issuance / Revision / Renewal 29

5.1 Finding: The ADEQ has no title V permit backlog and issues initial and renewal permits in a timely manner. 29

5.2 Finding: ADEQ R18-2-306.01, "Permits Containing Voluntarily Accepted Emission Limitations and Standards," allows sources to voluntarily limit their potential to emit to avoid title V applicability. 30

6. Compliance 32

6.1 Finding: The ADEQ performs full compliance evaluations of all title V sources on an annual basis. 32

6.2 Finding: The ADEQ's permitting and compliance managers communicate effectively with each other and meet routinely to discuss programmatic issues. 32

6.3 Finding: The Permits Unit reviews compliance reports before a permit renewal is issued and discusses compliance issues with the Compliance Unit. 33

6.4 Finding: The Permit Unit reviews all compliance and deviation reports and uses an internal decision matrix to determine whether to escalate issues to the Compliance Unit. 33

7. Resources and Internal Management 34

7.1 Finding: The ADEQ permitting and compliance staff report that they receive effective legal support from both the Attorney General's office as well as an in-house attorney. 34

7.2 Finding: In preparing its initial response to the EPA's evaluation questionnaire and during the EPA's site visit, the ADEQ was unable to provide information identifying the revenue and expenses associated with the ADEQ's title V permitting program. 35

7.3 Finding: From 2008 to 2020, portions of the ADEQ permitting fee revenue from the Air Permits Administration Fund (APAF) was diverted from the ADEQ permitting program to support other programs and the Arizona General Fund. 36

7.4 Finding: There is a process to escalate potential issues and empower staff to solve problems. 37

7.5 Finding: The Department provides training for its permitting staff. 37

7.6 Finding: Most permitting staff are aware of environmental justice (EJ) but are not familiar with how the Department's EJ principles affect their work. 37

7.7 Finding: The ADEQ focuses on succession planning in the event of unexpected retirements or departures. 38

7.8 Finding: The ADEQ management sets aggressive timeframes for staff to process title V permitting actions. 39

8. Records Management 40

8.1 Finding: The ADEQ's Records Center has a central file system in the building and is well managed. It is a great improvement from our 2006 Evaluation finding. 41

8.2 Finding: The ADEQ uses an electronic database to track title V permits effectively, issue general permits, and assist in compliance reporting. 41

Appendix A. Air Pollution Control Agencies in Arizona

Appendix B. Title V Questionnaire and the ADEQ Responses

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

Appendix D. Map of Linguistically Isolated Households in the ADEQ

Appendix E. Fee Information

Appendix F. 2015 State Review Framework

Appendix G. Nondiscrimination Program Plan, January 2017

Appendix H. The ADEQ Comments on the Draft Report

Appendix I. The EPA Response to the ADEQ Comments

Acknowledgments
EPA Region 9 acknowledges the cooperation of the staff and management of the Arizona Department of Environmental Quality (ADEQ). We appreciate their willingness to respond to information requests and share their experiences regarding the implementation of the ADEQ's title V program under the Clean Air Act.

Glossary of Acronyms and Abbreviations

Act	Clean Air Act [42 USC Section 7401 et seq.]
ADEQ	Arizona Department of Environmental Quality
AMS	Arizona Management System
AQD	ADEQ Air Quality Division
ARS	Arizona Revised Statutes
CAA	Clean Air Act [42 USC Section 7401 et seq.]
CAM	Compliance Assurance Monitoring
CFR	Code of Federal Regulations
Department	Arizona Department of Environmental Quality
EJ	Environmental Justice
EPA	U.S. Environmental Protection Agency
FCE	Full Compliance Evaluation
NAAQS	National Ambient Air Quality Standard
NESHAP	National Emission Standards for Hazardous Air Pollutants, 40 CFR Parts 61 & 63
NOC	Notice of Opportunity to Correct Deficiencies
NOV	Notice of Violation
NO_x	Nitrogen Oxides
NSPS	New Source Performance Standards, 40 CFR Part 60
NSR	New Source Review
OIG	EPA Office of Inspector General
PM	Particulate Matter
PM_{10}	Particulate Matter less than 10 micrometers in diameter
$PM_{2.5}$	Particulate Matter less than 2.5 micrometers in diameter
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
Region	U.S. Environmental Protection Agency Region 9
SIP	State Implementation Plan
SO_2	Sulfur Dioxide
SW	Standard Work
Team	EPA Region 9 Program Evaluation Team
TSD	Technical Support Document

Executive Summary

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

The EPA's Region 9 ("the Region") oversees 47 air permitting authorities with title V programs. Of these, 43 are state or local authorities approved pursuant to 40 CFR part 70 (35 in California, three in Nevada, four in Arizona, and one in Hawaii), referred to as "Part 70" programs. The terms "title V' and "Part 70" are used interchangeably in this report. The Region also oversees a delegated title V permitting program in Navajo Nation under 40 CFR part 71 and title V programs in Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands under 40 CFR part 69, referred to, respectively, as "Part 71" and "Part 69" programs. Because of the significant number of permitting authorities, the Region has committed to performing, on an annual basis, one comprehensive title V program evaluation of a permitting authority with 20 or more title V sources. This approach covers about 85% of the title V sources within the Regional boundaries.

The Region initially conducted a title V program evaluation of the Arizona Department of Environmental Quality (ADEQ or "Department") in 2006 ("2006 Evaluation").[1] This is the second title V program evaluation the EPA has conducted for the ADEQ. The EPA Region 9 program evaluation team (Team) for this evaluation consisted of the following EPA personnel: Amy Zimpfer, Air and Radiation Division Assistant Director; Lisa Beckham, Acting Manager of the Air Permits Office; Ken Israels, Program Evaluation Advisor; Sheila Tsai, Program Evaluation Coordinator; Khoi Nguyen, Program Evaluation Team Member, and Mario Zuniga, Program Evaluation Team Member.

The program evaluation was conducted in four stages. During the first stage, the Region sent the ADEQ a questionnaire focusing on title V program implementation in preparation for the site visit at the ADEQ's offices (see Appendix B, Title V Questionnaire and ADEQ Responses). During the second stage, the Team conducted an internal review of the EPA's own set of ADEQ title V permit files. The third stage was a site visit, which consisted of Region 9 representatives visiting the ADEQ office, located in Phoenix, AZ, to interview Department staff and managers. The site visit took place December 3-6, 2019. The fourth stage involved follow-up and clarification of issues for completion of the draft report.

The Region's 2020 title V program evaluation of the ADEQ's Part 70 program and implementation of the program concludes that the ADEQ implements a generally effective program. We specifically find that the Department generally follows guidance documents and written procedures on processing of permit revisions to assure compliance with all applicable requirements (Findings 2.2 and 2.6);

[1] Arizona Department of Environmental Quality Title V Operating Permit Program Evaluation, dated June 2, 2006. See https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf

promotes communication and empowers staff to solve problems (Finding 7.4); and maintains well organized records center (Finding 8.1). We have also identified certain areas for improvement. Major findings from our report are listed below:

1. Finding: The ADEQ staff have a clear understanding of, and the ability to correctly implement, the various title V permit revision tracks pursuant to the Department and federal regulations. (Finding 2.4)

2. Finding: The Department generally incorporates applicable requirements into title V permits in an enforceable manner. (Finding 2.6)

3. Finding: The ADEQ includes sufficient monitoring to ensure compliance with applicable requirements. (Finding 3.2)

4. Finding: The ADEQ developed source-specific forms for semi-annual and annual monitoring reports. (Finding 3.3)

5. Finding: The ADEQ improved notification regarding the public's right to petition the EPA Administrator to object to a title V permit. (Finding 4.2)

6. Finding: The ADEQ uses a multi-pronged approach to public participation to reach as many people as possible. For example, the ADEQ translates public notices and publications into Spanish. (Finding 4.3)

7. Finding: The ADEQ has no title V permit backlog and issues initial and renewal permits in a timely manner. (Finding 5.1)

8. Finding: The ADEQ's permitting and compliance managers communicate effectively with each other and meet routinely to discuss programmatic issues. (Finding 6.2)

9. Finding: In preparing its initial response to the EPA's evaluation questionnaire and during the EPA's site visit, the ADEQ was unable to provide information identifying the revenue and expenses associated with the ADEQ's title V permitting program. (Finding 7.2)

10. Finding: From 2008 to 2020, portions of the ADEQ permitting fee revenue from the Air Permits Administration Fund (APAF) was diverted from the ADEQ permitting program to support other programs and the Arizona General Fund. (Finding 7.3)

Our report provides a series of findings (in addition to those listed above) and recommendations that should be considered in addressing our findings. As part of the program evaluation process, we provided the ADEQ an opportunity to review these findings and consider our recommendations. The ADEQ was provided the draft report on September 17, 2020 and we received the ADEQ's response and comments on October 19, 2020 (see Appendix H). Based on the comments received from the ADEQ, the EPA made minor clarifications and corrected typographical errors in the final report.

To address our recommendations for improvement, we request that the ADEQ submit a workplan within 90 days of their receipt of the final report. The workplan should include specific goals and milestones that can be used to demonstrate progress. We commit to meet with the ADEQ at least quarterly to discuss progress until both the ADEQ and the EPA mutually agree the workplan items are sufficiently complete.

1. Introduction

Background

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

After reviewing several selected state and local air pollution control agencies, the OIG issued a report on the progress of title V permit issuance by the EPA and states.[2] In the report, the OIG concluded that 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.

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

On October 20, 2014, the OIG issued a report, "Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues," that recommended, in part, that the EPA: establish a fee oversight strategy to ensure consistent and timely actions to identify and address violations of 40 CFR part 70; emphasize and require periodic reviews of title V fee revenue and accounting practices in title V program evaluations; and pursue corrective actions, as necessary.[3]

The EPA's Region 9 oversees 47 air permitting authorities with operating permit programs. Of these, 43 are state or local authorities with title V programs approved pursuant to 40 CFR part 70 (35 in California, three in Nevada, four in Arizona, and one in Hawaii), referred to as "Part 70" programs. The Region also oversees a delegated title V permitting program in Navajo Nation under 40 CFR part 71 and

[2] See Report No. 2002-P-00008, Office of Inspector General Evaluation Report, "EPA and State Progress In Issuing title V Permits", dated March 29, 2002, which can be found on the internet at https://www.epa.gov/sites/production/files/2015-12/documents/titlev.pdf.

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

title V programs in Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands under 40 CFR part 69, referred to, respectively, as “Part 71” and “Part 69” programs. Due to the significant number of permitting authorities, the Region has committed to performing one comprehensive title V program evaluation of a permitting authority with 20 or more title V sources every year. This approach covers about 85% of the title V sources in the Region.

Title V Program Evaluation at Arizona Department of Environmental Quality

This is the second title V program evaluation the EPA has conducted for ADEQ. The first title V program evaluation was conducted in 2006. Thus, this evaluation is a follow-up to ADEQ’s 2006 title V program evaluation. The EPA Region 9 program evaluation team (Team) for this evaluation consisted of the following EPA personnel: Amy Zimpfer, Air and Radiation Division Assistant Director; Lisa Beckham, Acting Manager of the Air Permits Office; Ken Israels, Program Evaluation Advisor; Sheila Tsai, Program Evaluation Coordinator; Khoi Nguyen, Program Evaluation Team Member; and Mario Zuniga, Program Evaluation Team Member.

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

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

The third stage of the program evaluation included a site visit to the ADEQ office in Phoenix, Arizona to conduct further file reviews, interview ADEQ staff and managers, and review the Department’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 December 3-6, 2019.

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

The ADEQ Description

Under the Environmental Quality Act of 1986, the Arizona State Legislature created the ADEQ in 1987 as the state's cabinet-level environmental agency. The ADEQ is composed of three environmental programs: Air Quality, Water Quality, and Waste, with functional units responsible for technical, operational, and policy support. The ADEQ carries out several core functions: planning, permitting, compliance management, monitoring, assessment, cleanups, and outreach. The ADEQ also maintains a regional office in Tucson, with community liaisons posted in various parts of the state.

The ADEQ Air Quality Division (AQD) core responsibilities include developing and implementing programs designed to ensure that Arizona meets national air quality standards, regulating the emission of air pollutants from industries and facilities by issuing and ensuring compliance with permits that ensure emissions are within healthful limits, monitoring Arizona's air quality, investigating complaints and violations of Arizona's air quality laws, and developing state rules governing air quality standards. The AQD is organized by the following sections: Vehicle Emissions Control Value Stream, Facilities Emissions Control Value Stream, Improvement Planning Value Stream, and Monitoring & Assessment Value Stream. Facilities Emissions Control Value Stream, managed by a section manager, is divided into the Permits Unit and the Compliance Unit, each with a unit manager. Stationary source air permits, including title V permits, are issued by the Permits Unit, which has about nine permit engineers that work on both minor source and title V permits. Compliance and enforcement activities, such as facility inspections, source testing/source testing oversight, and preparing enforcement cases are handled by the Compliance Unit, which is currently made up of twelve staff members.

Coordination with other State of Arizona Air Pollution Control Agencies

The ADEQ is responsible for submitting the State Implementation Plan (SIP) and federally-mandated air permitting programs for Arizona to the EPA. In addition to ADEQ, local air quality control agencies within the State of Arizona are operated by Maricopa County, Pima County, and Pinal County. State law and delegation agreements between ADEQ and the county air quality control agencies describe the roles and responsibilities of each agency and delineate jurisdiction of sources within Arizona.

Title 49, Chapter 3, Air Quality of the Arizona Revised Statutes (ARS) provides authority for county air quality control agencies to permit sources of air pollution, including sources operating pursuant to title V of the Act. Arizona law provides that the ADEQ has jurisdiction over sources, permits and violations that pertain to (1) major sources in any county that has not received approval from the EPA Administrator for New Source Review (NSR) and Prevention of Significant Deterioration (PSD); (2) metal ore smelters; (3) petroleum refineries; (4) coal-fired electrical generating stations; (5) Portland cement plants; (6) air pollution by portable sources; (7) mobile sources;[4] and (8) sources located in a county which has not submitted a program as required by title V of the Act or a county that had its

[4] However, per §209(a) of the Clean Air Act, "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part." See Section 209 of the Clean Air Act for more details.

program disapproved.[5] All other sources located in Maricopa, Pima, and Pinal Counties are under the jurisdiction of the respective counties. Arizona law further provides authority for the Director of ADEQ to delegate to local air quality control agencies authority over sources under ADEQ jurisdiction.[6]

Arizona law provides authority for county air quality control agencies to review, issue, revise, administer, and enforce permits for sources required to obtain a permit.[7] It mandates that county procedures for review, issuance, revision and administration of permits for sources subject to the requirements of title V of the Act be identical to the procedures for such sources permitted by the State. Under Arizona law, all sources subject to permitting requirements within the State of Arizona, exclusive of Indian country, are covered by either the state or a county permitting program.

The ADEQ Title V Program

The EPA granted interim approval to the ADEQ's title V program on November 29, 1996, effective November 29, 1996 and full approval on December 5, 2001, effective November 30, 2001.[8]

Part 70, the federal regulation that contains the title V program requirements for states, requires that a permitting authority take final action on each permit application within 18 months after receipt of a complete permit application. The only exception is that a permitting authority must take action on an application for a minor modification within 90 days of receipt of a complete permit application.[9] The ADEQ's local rules regarding title V permit issuance contain the same timeframes as Part 70.[10]

Currently, there are 49 sources in the ADEQ jurisdiction that are subject to the title V program. The Department has sufficient permitting resources[11], and processes title V permit applications in a timely manner. The ADEQ currently does not have a title V permit backlog.

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[5] See ARS 49-402.

[6] See ARS 49-107.

[7] See ARS 49-480(B). This statute states the following: "Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and required to be obtained pursuant to Title V of the Clean Air Act including sources that emit hazardous air pollutants shall be substantially identical to procedures for the review, issuance, revision and administration of permits issued by the Department under this chapter. Such procedures shall comply with the requirements of sections 165, 173 and 408 and Titles III and V of the clean air act and implementing regulations for sources subject to Titles III and V of the clean air act. Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and not required to be obtained pursuant to Title V of the clean air act shall impose no greater procedural burden on the permit applicant than procedures for the review, issuance, revision and administration of permits issued by the Department under sections 49-426 and 49-426.01 and other applicable provisions of this chapter."

[8] 61 FR 55910 (October 30, 1996) and 66 FR 63175 (December 5, 2001), respectively.

[9] See 40 CFR 70.7(a)(2) and 70.7(e)(2)(iv).

[10] See ADEQ R18-2-319.

[11] See Section 7 of this report.

The Arizona Management System (AMS)

Lean management is an approach to managing an organization with the concept of continuous improvement through various methods such as visual management, standard process, performance measures, business reviews, and problem solving. The ADEQ has adopted this management style over the past seven years to "further its mission to protect and enhance public health and the environment of Arizona."[12] Since the state-wide implementation of the Arizona Lean Management System (now Arizona Management System (AMS)) in 2012, the ADEQ has developed multiple visual management and problem-solving tools that are utilized to identify potential permitting issues and share those issues with the permitting team to leverage people's experiences. The goal is to minimize idle time in the permitting process and increase accountability as a collective team in permitting sources. The Air Permits Unit also utilizes a tool called Standard Work (SW) to ensure each permit engineer knows the process steps for each permit type. The purpose of SW is to allow new employees to easily pick up the process steps, allowing for more time to be spent on technical aspects of the permitting process. Since the 2006 Evaluation, the ADEQ has developed templates to be utilized for permit renewals and implemented the use of external regulatory frameworks/tools to streamline rule review and increase understanding of the permitting process. Support for training, development, and alignment with AMS ensures that permit engineers are supported to develop legally defensible permits. Over the years, the ADEQ has developed two major guidance documents that have also contributed to the improvement of permits: Air Dispersion Modeling Guidance and Minor New Source Review Guidance.[13]

The EPA's Findings and Recommendations

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

The findings and recommendations in this report are based on the Department's responses to the title V Questionnaire, the EPA's internal file reviews performed prior to the site visit to the ADEQ, interviews and file reviews conducted during the December 3-6, 2019 site visit, and follow-up emails and phone calls made since the site visits.

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[12] https://azdeq.gov/node/3764

[13] Air Dispersion Modeling: http://azdeq.gov/node/2126; Minor New Source Review: https://legacy.azdeq.gov/environ/air/permits/download/minor_nsr_guid.pdf

2. Permit Preparation and Content

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

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

Discussion: Interviewees were consistent in their description of the ADEQ's quality assurance process for reviewing title V permits. The ADEQ has developed processes and templates to help ensure consistency from permit to permit. The draft permit package is first reviewed in depth by the unit manager and then reviewed by the section manager for completeness, accuracy, and approval. After internal management review the permit is sent to the permittee for review and comment.

In the 2006 Evaluation, the ADEQ did not have written quality assurance procedures.[14] The ADEQ now has a defined written process for title V permits and staff are well-informed of the process through SW. During the interviews, most staff stated they appreciate having SW and templates. One notable difference from the previous program evaluation is that the Compliance Unit is no longer involved in the permit review process before the permit goes out for public comment. Instead, the Compliance Unit receives a copy during the public comment period. Generally, the Compliance Unit is aware of each permit action being processed and has an opportunity to identify any potential issues or complexities related to the facility during the public comment period. However, not having an official permit review period prior to public notice may make it more challenging for enforcement to provide or incorporate feedback that would result in a permit change because the permit is already out for public review.

Recommendation: The EPA commends the ADEQ's improvement for developing written procedures for its permitting processes. However, please note areas of improvement in permit quality in Findings 2.2 and 2.3. The ADEQ quality assurance process appears to be effective, but we recommend including compliance review prior to the public participation process.

2.2 **Finding:** The ADEQ maintains template documents developed to provide direction for several elements of permit writing.

Discussion: As mentioned in Finding 2.1, the ADEQ uses templates for developing permits and Statements of Bases, or as the Department refers to them, technical support documents (TSDs),

[14] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 2.1.

to ensure consistency. In the 2006 Evaluation, the EPA recommended the ADEQ further develop TSD templates to include more detail.[15] For example, in the TSD outline, the EPA recommended that the ADEQ include specific references to PSD/NSR history and compliance assurance monitoring (CAM). Currently, the ADEQ's standard template for TSDs includes the following information:[16] an introduction, evaluation of nearby learning sites (e.g., public schools), compliance history, emissions information, minor NSR review, applicable regulations, review of changes to previous permit conditions, monitoring, recordkeeping, and reporting requirements, testing requirements, and ambient air impacts. The TSD template also includes "gatekeeper" criteria; permitting staff follow the modification definitions in the ADEQ rules and the "gatekeeper" section in the TSD template to determine which of the title V permit revision tracks applies to a permit revision.

During interviews, permitting staff raised concerns that the templates are not always up to date, and a standard procedure for updating the templates has not been developed. While permits of similar sources are generally consistent, the EPA did find a few instances where permits of similar sources differ in both organization and included requirements.[17] In our draft report, we recommended developing a process for updating the templates as needed and notifying staff when templates are updated so staff can incorporate the most recent changes in a timely manner. The ADEQ provided additional details on a tool they developed to automatically generate folders and templates once a permit application is received. The templates are pulled from a centralized location where new templates are saved and older templates are archived. This process ensures that the correct and most up to date templates are used.

Additionally, review of TSDs for various actions demonstrated that not all actions include the sections identified in the templates. Review of minor and significant revision actions demonstrated that very limited information is sometimes provided compared to the template TSD.[18] One reason for this is that the TSD template for revisions recommends omitting sections if determined unnecessary and not applicable. However, instead of omitting sections, it would be more helpful to the EPA and the public if the TSD explained why a section was not applicable for a given action.

Recommendation: We commend the ADEQ for developing a process for updating templates and encourage the ADEQ to continue to develop and improve templates for permitting

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[15] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 2.2.

[16] The ADEQ also has a second template that is specific to permit revisions that identifies that the TSD should include: an introduction, emissions information, revision description, evaluation of nearby learning sites, applicable regulations, periodic monitoring, testing requirements, minor revision "gatekeeper" analysis (evaluation as to why a revision qualifies as a minor revision), and equipment list updates.

[17] The EPA reviewed the permits from Alamo Lake Compressor Station, Hackberry Compressor Station, and Wenden Compressor Station for the purpose of comparing the permitting files of these similar sources.

[18] Revisions reviewed included: minor revisions for Freeport-McMoRan Miami (Permit #66039), Salt River Project – Coronado Generating Stations (Permit #64169), APS – Fairview Generating Station (Permit #61352).

documents. In our draft report, we stated that the TSD templates could be strengthened by including CAM and PSD/NSR history and applicability (including NAAQS attainment status and applicable permitting thresholds). After our site visit, the ADEQ held a TSD mapping meeting to identify gaps and opportunities that had historically resulted in rework and lack of clarity. The mapping meeting and the research that was completed resulted in a comprehensive TSD template that includes a more robust NSR applicability section that addressed our recommendation.

2.3 **Finding:** The ADEQ generally identifies regulatory and policy decisions in its TSDs.

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

The EPA has issued guidance on the required content of statements of basis on several occasions, most recently in 2014.[19] This guidance has consistently explained the need for permitting authorities to develop statements of basis with sufficient detail to document their decisions in the permitting process. The EPA provided an overview of this guidance in a 2006 title V petition order. *In the Matter of Onyx Environmental Services*, Order on Petition No. V-2005-1 (February 1, 2006) (*Onyx Order*) at 13-14. In the *Onyx Order*, in the context of a general overview statement on the statement of basis, the EPA explained:

> *A statement of basis must describe the origin or basis of each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that U.S. EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from simply a straight recitation of applicable requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring that is required under 40 C.F.R. § 70.6(a)(3)(i)(B). Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and U.S. EPA a record of the applicability and technical issues surrounding the issuance of the permit. (Footnotes omitted.) See, e.g., In RePort Hudson Operations, Georgia Pacific, Petition No. 6-03-01, at pages 37-40 (May 9, 2003) ("Georgia Pacific"); In Re Doe Run Company Buick Mill and Mine, Petition No. VII-1999-001, at pages 24-25 (July 31, 2002) ("Doe Run"); In Re Fort James Camas Mill, Petition No. X-1999-1, at page 8 (December 22, 2000) ("Ft. James").*

[19] Memorandum from Stephen D. Page, Director of the Office of Air Qualtiy Planning and Standards, "Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Permits," April 30, 2014. https://www.epa.gov/sites/production/files/2015-08/documents/20140430.pdf

Onyx Order at 13-14. Appendix C of this report contains a summary of the EPA guidance to date on the suggested elements to be included in a Statement of Basis.

As previously discussed in Finding 2.2, the Department uses templates for its TSDs. With our recommended improvements, we believe these template TSDs can serve as an effective means for ADEQ staff to document regulatory and policy decisions during the review process. In reviewing specific TSDs, we found the Department occasionally adds relevant information about a source beyond the identified template sections (e.g., alternate operating scenarios and compliance assurance monitoring). During interviews, permitting staff indicated that the quality of a TSD for a renewal permit most likely depends on the quality of the prior renewal actions as limited time may be spent updating the TSD. Thus, it is important to not only update the template outlines for TSDs, but also ensure each TSD reflects the most recent TSD template and any changes or updates to the facility from previous renewals.[20]

Most of the renewal permits reviewed by the EPA contained a discussion of all applicable and potentially applicable requirements. However, the file review led to the discovery of two examples where a discussion of potentially applicable requirements was omitted in the TSD.[21] There were also a few instances where the date of installation or construction of a unit is not clear. This may be significant as the applicability of certain requirements may change based on the date of installation or modification.[22, 23]

The Department also routinely identifies “material permit conditions,” as required per ADEQ R18-2-331, in its title V permits. Per ADEQ R18-2-331, material permit conditions can be, among

[20] For example, the TSD for the APS – Cholla Generating Station renewal permit (#65054 Renewal) contains a thorough and detailed description of the coal-fired generating station, including its equipment and operations. However, a review of the permit shows that the facility will be converting to natural gas. This type of new information and significant change in how the facility will be operating in the future should be included in the TSD as this may affect requirements that become applicable during the term of the permit.

[21] See Alamo Lake Compressor Station, NSPS Subpart KKKK applicability in the TSD for permits 49503 and 78413 and Drake Cement Plant, NSPS Subpart F applicability in the TSD for permit 65587.

[22] The date of installation for boiler 4 for the Cholla Generation Station is not clear. The boiler could be subject to different NSPS requirements if it began construction after September 18th, 1978; in that case the boiler would be subject to NSPS Subpart Da requirements instead of Subpart D requirements. The date of installation or modification is further unclear as the permit contains requirements from both Subpart D and Da (see Section III. of permit 65054). If the boiler is subject to NSPS Subpart Da requirements, the TSD should include a brief explanation to clarify the applicability determination.

[23] In another example, the TSD for Alamo Lake Compressor Station permit 49503 states that the “year of manufacture” for the Solar Turbine is 2007, it was constructed “after October 3, 1997,” a “like-kind component exchange was completed in February 2008,” and it is not subject to NSPS Subpart KKKK. Subpart KKKK applies to Stationary Combustion Turbines which commenced construction, modification, or reconstruction after February 18, 2005. The use of the term “Year of Manufacture” for the turbine in the TSD is easily interpreted as the year of construction. Therefore, a “year of manufacture,” or construction, of 2007 would make the turbine subject to the requirements of Subpart KKKK. If the turbine is not subject to Subpart KKKK requirements, the TSD should clearly explain why the Solar Turbine is not subject to Subpart KKKK. Furthermore, NSPS Subpart OOOO should be mentioned in compressor station permit TSDs as these requirements could be applicable to the turbines in the event they are modified or reconstructed.

other things, "[an] enforceable emission standard imposed to avoid classification as a major modification or major source or to avoid triggering any other applicable requirement." Limited information, if any, is provided in TSDs related to material permit conditions. If a material permit condition is used to avoid an otherwise applicable requirement, it is not clear which requirement is being avoided. As such, it is difficult to confirm that the facility is in fact qualified to avoid applicability of a requirement. The Department should discuss the basis of the material conditions in the TSD and identify each requirement that is being avoided through the material permit condition. This would enable EPA, the public, and the facility to understand the basis of the material permit conditions and enable reviewers to verify that avoided requirements are not applicable.

Recommendation: The Department should continue its practice of using template TSDs to help ensure regulatory and policy decisions are documented. We also recommend the ADEQ continue the practice of adding additional discussion topics to TSDs, as warranted for individual actions. It is unclear what may have caused the specific inconsistencies in TSDs identified in this finding, but we recommend the ADEQ investigate and correct these issues accordingly. Further, we recommend the ADEQ develop methods for ensuring renewal TSDs are updated with new or updated information and that TSDs discuss the basis of material permit conditions, including any requirements being avoided. As discussed in Finding 2.2's recommendation, the ADEQ's TSD mapping meeting resulted in a comprehensive TSD template that includes more elements such as the reasoning for voluntarily accepted conditions or material permit conditions. The EPA commends the ADEQ's efforts.

2.4 **Finding:** The ADEQ staff have a clear understanding of, and the ability to correctly implement, the various title V permit revision types or tracks pursuant to the Department and federal regulations.

Discussion: In our 2006 Evaluation, the EPA recommended that the ADEQ develop and implement a guidance document for determining if a permit revision is significant, minor, or off-permit consistent with Part 70 and ADEQ's approved title V program.[24] The EPA stated that the ADEQ must ensure that sources proposing to make off-permit changes be documented in a TSD, through a memorandum to the file, or some other mechanism that consistently and accurately records off-permit determinations and justifications. The EPA also recommended that the ADEQ prepare Statement of Basis for all minor permit revisions and include them in permit review submittals to the EPA.

As mentioned in Finding 2.2, the ADEQ developed "gatekeeper" criteria in its permit templates; permitting staff follow the definitions in the ADEQ rules and the "gatekeeper" section in the TSD template to determine which of the title V permit revision tracks applies to a permit revision. Their determination regarding which track applies is also verified by the supervisor during the review process.

[24] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 5.4.

The ADEQ can produce records for all permit revisions, including administrative, off-permit changes, and minor permit revisions easily through their file system. Based on our file review of various minor permit and off-permit actions,[25] the ADEQ has demonstrated it consistently documents its rationale and justification for minor permit revisions and off-permit changes in a memorandum or TSD as part of the permit action record. The ADEQ also provides these determinations to the EPA. The EPA commends ADEQ for including such memorandums and TSDs in the permit record.

The ADEQ's understanding of the criteria for classifying title V revisions allows for consistent processing of title V permit changes.

Recommendation: The ADEQ should continue to ensure permitting staff successfully categorize title V permit actions and continue its good practice of thoroughly documenting the rationale and justification for its permit revision decisions.

2.5 Finding: The Department has made revisions to its title V program to implement a unitary permitting program.

Discussion: In our 2006 Evaluation, we identified concerns with the Department's transition to a unitary permitting program (which uses many of the same rules to meet title V and New Source Review (NSR) program requirements) that utilized rules that had not been approved into Arizona's SIP and did not necessarily ensure permitting actions were reviewed to determine NSR applicability.[26] Since then, the ADEQ and the EPA have been working to update the ADEQ's SIP-approved NSR program. In 2012, the ADEQ submitted a complete revision of its NSR program for the EPA's approval. The revision integrated the ADEQ's title V and NSR programs into a unitary permitting program and included procedures for determining NSR applicability. Most of these revisions have been approved into Arizona's SIP,[27] but a few outstanding deficiencies currently remain that the ADEQ and the EPA are working to address. We note however, that SIP approval of a rule does not equate to title V approval. Thus, since the Department relies on some of the same rules for NSR and title V purposes, and many of those rules have been revised since EPA's 2001 approval of the ADEQ's title V program,[28] the Department should submit a title V program revision once the remaining deficiencies in the NSR program are addressed.

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[25] The minor permit revisions and off-permit changes reviewed include: Coronado Generating Station Permit No. 64169, Minor Permit Revision No. 71352; Springerville Generating Station Permit No. 53418, Facility Change Without a Permit Revision No. 66694; Springerville Generating Station Permit No. 65614, Facility Change Without Permit Revision Nos. 77262 and 77660; Drake Cement Permit No. 65587, Facility Change Without Permit Revision No. 73928; and Rillito Cement Plant Permit No. 61522, Minor Permit Revision No. 73015.

[26] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 5.2.

[27] See, e.g., 80 Fed. Reg. 67319 (Nov 2, 2015) and 83 Fed. Reg. 19631 (May 4, 2018).

[28] E.g., ADEQ R18-2-301, 302, 304, 306, 307, 317, 319, 320, and 321.

Recommendation: The ADEQ should submit a title V program revision to the EPA for approval once the remaining deficiencies in ADEQ's NSR program are addressed.

2.6 Finding: The Department generally incorporates applicable requirements into title V permits in an enforceable manner.

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

The Department generally incorporates applicable requirements into title V permits with sufficient detail to enable the facility and compliance staff to ensure compliance.[29] The permits issued by the department are organized into attachments that contain specific sets of enforceable requirements, equipment lists, or other provisions. Based on ADEQ's Class I template, title V permits consistently include three separate attachments: Attachment "A" – General Provisions; Attachment "B" – Specific Conditions; and Attachment "C" – Equipment List. This consistency helps reviewers more easily locate permit conditions and content. However, based on EPA's review, there are times when some permits reference attachments which are blank or are not found in the permit file.[30]

Based on our review of the Department's title V permits, the ADEQ mostly incorporates applicable requirements into its title V permits in an enforceable manner and with the appropriate level of detail. The EPA recommends the Department include in its quality assurance process a step to confirm the inclusion of all relevant attachments in each permit,

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[29] The EPA found instances where the limits were not enforceable as a practical matter because sufficient monitoring and recordkeeping was not included, or the permits did not contain all referenced materials, including attachments from other permits. Although the permits include voluntary emission limits, some permits do not include sufficient monitoring and recordkeeping to verify compliance with all the limits. See the permit for Drake Cement, permit 65587, Condition III.C.3. In this condition, the permit places a limit of 9,700 tons per year of filter cake from semiconductor manufacturing filtration process that can be incorporated into the cement process. Per condition III.C.4.g., the permit only requires the records to document chemical and elemental makeup of semiconductor manufacturing filtration process filter cake (SMFPFC) in units of part per million, as well as a monthly analysis of fluoride concentration and a "comprehensive laboratory analysis" during each month and quarter in which filter cake is received. The permit does not require the facility to monitor and maintain records of the quantity of SMFPFC incorporated per month.

[30] As an example, the Phoenix Cement Plant permit, permit 69780, lists Attachment "E": Operation & Maintenance Plan in the table of contents and references it in the facility-wide air pollution control requirements section of the permit. While Attachment "E" is found in the permit PDF file at the end, the attachment is blank and does not contain the O&M Plan. As a separate example, the Cholla Generation Station permit 65054 repeatedly references Attachment "F", SPR #61713 in numerous permit conditions, yet Attachment "F" from SPR #61713 is not mentioned in the table of contents nor is it found in the PDF file of the final permit. If the permit conditions reference attachments from separate permits, those referenced attachments must be attached to the title V permit referencing them so that the title V permit is a standalone document.

including the versions provided for review by the EPA and the public.[31] We recommend the Department develop a process to ensure the attachments mentioned and referenced in the permits are included in a sufficient manner as to assure compliance with applicable requirements.

Recommendation: The ADEQ should continue its good practice of incorporating requirements in sufficient detail to ensure that permit conditions are practically enforceable. We recommend the Department develop a process to ensure the attachments mentioned and referenced in the permits are included and filled out with the relevant information to assure compliance with applicable requirements. In addition, the EPA recommends the Department correct the issues identified in the examples mentioned in the footnotes to this section and develop a process to check for this type issue in other permits.

2.7 **Finding:** The Department references the regulatory authority for each applicable requirement in the permit conditions and includes a permit shield for these requirements.

Discussion: Based on the EPA's review of the Department's permits, the ADEQ typically references the regulatory authority from which the applicable requirements originate. Per 40 CFR 70.6(a)(1)(i), "The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based." This requirement is often fulfilled in the Department's permits. The EPA commends the Department on its effort to fulfill the requirements under paragraph 70.6(a)(1)(i).

In the permits we reviewed, the Department included a permit shield after each section of applicable requirements. This permitting practice further highlights the importance of referencing the appropriate regulations that are the basis for the condition, as each permit shield must include a reference to the regulation(s) to which the permit shield applies.[32] Otherwise, granting a permit shield for requirements found in other areas of the permit could lead to confusion about whether the referenced applicable requirements are actually part of the permit shield. Therefore, the EPA also recommends the Department ensure that each permit shield is limited to the applicable requirement(s) to which the permit shield is intended to apply.

Recommendation: The EPA commends the Department for its efforts in referencing the regulatory basis for applicable requirements in each permit. The EPA recommends the

[31] In a recent rulemaking clarifying title V petition requirements, EPA revised 40 CFR 70.8 to require that permitting authorities include a written RTC (where applicable) when submitting a permit to EPA for its 45-day review period. 85 FR 6431 (February 5, 2020).

[32] For example, Drake Cement permit 65587 contains a permit shield after each section in Attachment "B." The permit shield for Section II states that compliance with Section II "shall be deemed compliance with" among other requirements, 40 CFR 63.1346(g). However, the 40 CFR 63.1346(g) requirements are found in conditions III.D.1 through III.D.3. Therefore, the permit shield for 63.1346(g) should be placed in Section III instead of Section II.

Department ensure that each permit shield granted in a permit is placed in the correct section of the permit and limited to the applicable requirement(s) to which the permit shield is intended to apply.

3. Monitoring

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

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

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

3.1 Finding: The ADEQ successfully implements the CAM requirements.

Discussion: The CAM regulations, codified in 40 CFR Part 64, apply to title V sources with large emission units that rely on add-on control devices to comply with applicable requirements. The underlying principle, as stated in the preamble, is "to assure that the control measures, once installed or otherwise employed, are properly operated and maintained so that they do not deteriorate to the point where the owner or operator fails to remain in compliance with applicable requirements" (62 FR 54902, October 22, 1997). Per the CAM regulations, 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 with add-on control devices.

Based on interviews conducted during our site visit, we found that many permitting staff did not have experience working on CAM plans or received training on CAM. In our review of Department permits we found that when CAM applies the Department generally explains CAM applicability correctly and adds appropriate monitoring conditions to title V permits for sources subject to CAM.[33] However, CAM is not a standard section of the Department's TSDs and we found examples where CAM was not discussed in renewal and significant revision actions.[34] CAM applicability can evolve over time as a facility makes changes, and thus its applicability should be verified to ensure compliance.

Recommendation: The ADEQ should continue to implement the CAM rule as it processes permit renewals and significant modifications, and ensure its applicability is reviewed and discussed in the TSDs for these actions. The EPA recommends that the ADEQ update their TSD templates to include a standard section regarding CAM applicability. Additionally, CAM training may be needed for some staff. As discussed in Finding 2.2, after our site visit, the ADEQ held a TSD mapping meeting that resulted in a comprehensive TSD template that includes a specific section for a CAM discussion that addresses our recommendation.

3.2 **Finding:** The ADEQ includes sufficient monitoring to ensure compliance with applicable requirements.

Discussion: The title V program and the ADEQ's EPA-approved title V regulations have provisions that require permits to contain monitoring that is sufficient to demonstrate compliance with all applicable requirements. When an applicable requirement lacks sufficient monitoring, such as having only one time monitoring to demonstrate initial compliance or monitoring that is too infrequent to demonstrate compliance on an on-going basis, permitting authorities add "periodic monitoring" to fill the gaps in the applicable requirement. The ADEQ's rules requiring aforementioned periodic monitoring can be found in AAC R18-2-306.A.3.c.

The ADEQ includes detailed requirements in each title V permit that specifies the required monitoring and recordkeeping for the emissions units at the title V source. The monitoring includes requirements from CAM, applicable federal regulations (such as NSPS and NESHAPs), SIP rules, and, as appropriate, added periodic monitoring. Examples of periodic monitoring the ADEQ has added to title V permits include:

- Facilities subject to ADEQ's general opacity provisions found in AAC R18-2-702 – While R18-2-702 does not specify any monitoring requirements for opacity, ADEQ's title V permits contain a requirement requiring facilities to comply with the opacity provisions

[33] See Cholla Generating Station (Permit #65054), Freeport-McMorran Miami Inc (Permit #66039), Rillito Cement Plant (Permit #61522), Griffith Energy Power Plant (Permit #64101).

[34] Renewal Permits: EPNG – Alamo Lake (Permit #78418), EPNG – Hackberry (Permit #78436), EPNG – Wenden (Permit #61326). Significant Revisions: SRP – Coronado (Permit #63088), Superior Industries (Permit #72556), TEP – Springerville (Permit #60471).

in accordance with AAC R18-2-306.A.3.c. by setting opacity monitoring conditions in the title V permit.[35]

Recommendation: The ADEQ should continue to ensure title V permits contains sufficient monitoring to demonstrate compliance with all applicable requirements.

3.3 **Finding:** The ADEQ developed source-specific forms for semi-annual and annual monitoring reports.

Discussion: In our 2006 Evaluation, the EPA recommended that the ADEQ develop a source-specific form which identifies specific content that should be included in semi-annual monitoring reports.[36] As further discussed below in Finding 8.2, the ADEQ uses the myDEQ electronic database for submittal of compliance certifications and permit deviations. For compliance certifications, the sources can submit reports using approved templates that are also reviewed internally through the portal. Similarly, sources also have the ability to submit self-reported excess emission and permit deviation reports as required by their permits. The system has built in notifications to remind the sources to submit their reports and sends out emails if the reports are late.

Recommendation: The EPA commends the ADEQ's effort for automating the semi-annual and annual monitoring reporting process.

4. Public Participation and Affected State Review

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

The public notice must, at a minimum: identify the affected 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

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[35] See Cholla Generation Station (permit #65054), Lhoist North America (permit #79199), Drake Cement Plant (permit #65587).

[36] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 3.4.

comment procedures; and the time and place of any hearing that may be held, including procedures to request a hearing. See 40 CFR 70.7(h)(2).

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

4.1 **Finding:** The ADEQ provides public notices of its draft title V permitting actions on its website.

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

In our 2006 Evaluation, we encouraged ADEQ to develop a policy or guidance document that informs staff of the need to routinely notify affected states of relevant permitting activities and that its website should have the most recent permitting information available.[37] This information could include proposed and final title V permits, technical support documents, citizen petition procedures, responses to public comments, and general Title V information and guidance.

Currently, the Department website provides general information to the public and regulated community regarding the ADEQ permitting program.[38] The public can find information regarding the permitting process, whether a permit is needed for an operation, how to obtain a permit, application forms, and information about related programs that inform the Department's permitting program.

The ADEQ's website also provides a list of active projects that are in the public comment period along with the corresponding draft permit, TSD, and public notice, and information on how to comment electronically or by mail.[39] However, the website does not provide the public with access to final permits.

[37] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 4.1.

[38] https://azdeq.gov/node/6372

[39] https://azdeq.gov/notices

The ADEQ also maintains mailing lists for title V public notices and notifies affected states and tribes (usually within 50 kilometers of the Source) and sometimes joins tribal council meetings.

Recommendation: We recommend that the Department continue to provide the public information related to title V permits via their website. We also recommend posting final permits on the Department website for easier public access. The ADEQ stated that there is a Department-wide effort to create an online permits database that is still in its preliminary stages. The EPA encourages the ADEQ to continue to support this effort.

4.2 **Finding:** The ADEQ improved notification regarding the public's right to petition the EPA Administrator to object to a title V permit.

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

ADEQ R18-2-307 contains information about the public's right to petition the EPA Administrator to object to a title V permit. However, at the time of the EPA's site visit, the Department's draft and final permit packages,[41] including the public notice for the permit action, did not inform the public of the right to petition the EPA Administrator to object to a title V permit. We made the same finding during our 2006 Evaluation.

Following the site visit to the ADEQ, the EPA provided ADEQ sample language to address the public's right to petition to the EPA. The ADEQ worked internally with their communications team to include the language in the template for public notices as well as to include a link to the EPA's "Title V Petitions" page. This was completed and has been in place since April 2020.

Recommendation: The EPA commends the ADEQ for revising its public notice templates to inform the public of the right to petition the EPA Administrator to object to the issuance of a title V permit.

4.3 **Finding:** The ADEQ uses a multi-pronged approach to public participation to reach as many people as possible. For example, the ADEQ translates public notices and publications into Spanish.

Discussion: The ADEQ's jurisdiction includes sources located throughout Arizona. The EPA prepared a map of linguistically isolated communities within ADEQ's jurisdiction in which title V

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

[41] In an April 18, 2019 letter responding to comments on a specific title V permit action, we found an example where ADEQ notified a commenter of the right to petition the EPA Administrator. However, all members of the public should be informed of this right prior to submitting comments.

permits have been or may be issued (see Appendix D). The ADEQ uses a multi-pronged approach to public participation to reach as many people as possible by providing translation and language interpretation services to those communities during the title V permitting process as well as intensive community engagement based on the ADEQ staff knowledge and experience.

Recommendation: The EPA encourages the ADEQ to continue this practice.

4.4 **Finding:** The ADEQ's general practice is to conduct a concurrent public and EPA review. If comments are received during the 30-day public review period, the 45-day EPA review is restarted and run sequentially to the public review period, not concurrently.

Discussion: Per section 505(b) of the CAA and 40 CFR 70.8, state and local permitting agencies are required to provide proposed title V permits to the EPA for a 45-day period during which the EPA may object to permit issuance. The EPA regulations allow the 45-day EPA review period to either occur following the 30-day public comment period (i.e., sequentially), or at the same time as the public comment period (i.e., concurrently). When the public and the EPA review periods occur sequentially, permitting agencies will make the draft permit available for public comment, and following the close of public comment, provide the proposed permit and supporting documents to the EPA.[42] When the public and the EPA review periods occur concurrently, a state or local agency will provide the EPA with the draft permit and supporting documents at the beginning of the public comment period. As codified in 40 CFR 70.8, if the ADEQ receives comments from the public during the 30-day public review period, the 45-day EPA review would be restarted to allow the ADEQ to prepare responses to the public comments and provide the response to comments, and an updated permit and TSD to the EPA.

Recommendation: The ADEQ should continue its practice to prepare a response to comments, make any necessary revisions to the draft permit or permit record, and submit the proposed permit and other required supporting information to restart the EPA review period.

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

5. Permit Issuance / Revision / Renewal

This section focuses on the permitting authority's progress in issuing initial title V permits and the Department'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 title V permits. The EPA, as an oversight agency, is charged with ensuring that these deadlines are met as well as ensuring that permits are issued consistent with title V requirements. Part 70 describes the required title V program procedures for permit issuance, revision, and renewal of title V permits. Specifically, 40 CFR 70.7 requires that a permitting authority take final action on each permit application within 18 months after receipt of a complete permit application, except that action must be taken on an application for a minor modification within 90 days after receipt of a complete permit application.[43]

5.1 **Finding:** The ADEQ has no title V permit backlog and issues initial and renewal permits in a timely manner.

Discussion: At the time of our most recent site visit, the ADEQ had 49 title V sources and 96 synthetic minor sources. We found that the Department's internal procedures produced a solid record of timely permit issuance. The Department does not anticipate any delays in processing renewal applications.

The ADEQ's permit processing time has improved since our 2006 Evaluation. The ADEQ attributes this improvement to development of "standard work", permit templates, and raising potential issues to management early. Per regulatory requirements, permitting authorities have 18 months to issue a significant revision, 90 days for minor permit revisions, and 60 days for administrative amendments. The ADEQ has an aggressive internal goal for its major source permitting actions: 150 days for significant permit revisions, 65 days for minor permit revisions, and 2 days for administrative amendments.

In our 2006 Evaluation, the most significant obstacles to timely issuance of title V permits were obtaining information from sources and relatively high staff turnover.[44] During interviews for this program evaluation, many staff mentioned the most significant obstacle is waiting for facilities to pay fees. The ADEQ does not issue a final permit until the facility pays the permit fee, which can delay the overall permit issuance timeline.

We also note that the ADEQ's internal goals are significantly shorter than the federal requirements.[45] Some concerns were raised by staff that strict adherence to these targets may be resulting in a reduction in the quality of the permits, as further discussed in Finding 7.8.

[43] See 40 CFR 70.7(a)(2) and 70.7(e)(2)(iv).

[44] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 2.5.

[45] The ADEQ's goals are based on the time it takes to internally grant a permit decision and not the time it takes to actually issue a permit, which does not occur until after a facility pays its fees.

Following our site visit last year, the Permits Unit used Arizona Management System principles to evaluate the minor permit revision process for minor sources and determined that the touch time for reviewing the application and drafting the permit (10 days) should match the time frame for major sources (20 days) because the approach for minor NSR applicability was not substantially different. Management was supportive of adjusting the time frame upwards from 10 to 20 days.

Recommendation: The EPA commends the ADEQ for reevaluating its existing processes to promote continuous improvement. The Department should continue the practices that allow it to process title V permits within the timeframes established in title V regulations while assuring that the quality of the permits is not compromised (See recommendations in Section 2 and Finding 7.8).

5.2 Finding: ADEQ R18-2-306.01, "Permits Containing Voluntarily Accepted Emission Limitations and Standards," allows sources to voluntarily limit their potential to emit to avoid title V applicability.

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

Synthetic minor limits must be enforceable as a practical matter, meaning they are both legally and practicably enforceable.[46] According to EPA guidance, for emission limits in a permit to be practicably enforceable, the permit provisions must specify: 1) a technically-accurate limitation and the portions of the source subject to the limitations; 2) the time period for the limitation; and 3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting.[47]

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

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

[47] *Ibid*.

facility's emissions shall be determined or measured for assessing compliance with the emission limits.[48]

ADEQ R18-2-306.01 allows major sources to voluntarily limit their PTE to below major source thresholds to avoid the requirement to obtain a title V permit. Title V sources are required to demonstrate that their PTE is permanently reduced either through a facility modification or by accepting an enforceable permit condition to limit their PTE.

At our request, the ADEQ provided us with examples of synthetic minor permits.[49] The permits and TSDs generally provide a summary of why the source has requested a synthetic minor permit. However, most TSDs do not explain the applicable major source thresholds and how the source has taken limits to demonstrate synthetic minor source status. Furthermore, the permits contain no conditions specific to the pollutant which is subject to a synthetic minor limit.[50] The lack of such information makes it difficult for the EPA and the public to understand the basis behind the synthetic minor permit limit, what the applicable major source threshold is, and how compliance with the major source threshold is assured. As such, the permits do not clearly contain practically enforceable provisions which ensure the facilities do not emit above the applicable major source thresholds for specific pollutants.

Recommendation: The EPA recommends that the ADEQ include a section in the TSD to discuss synthetic minor limits that includes the applicable major source threshold, significance threshold, and/or permitting exemption threshold. Furthermore, as mentioned above, if a facility voluntarily accepts limits to avoid major source classification through a synthetic minor permit, the synthetic minor permit must contain practically enforceable conditions which ensure facility-wide emissions will not be at or above major source thresholds. The ADEQ should also consider the criteria from the Hu Honua petition response in future actions when issuing synthetic minor permits.

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

[49] The permits reviewed included the following types of facilities: a steel reshaping facility; two copper mining and processing plants; a chemical synthesis and repackaging facility; and a pet food manufacturing facility.

[50] Although some permits contain language that suggest certain pollutants have a synthetic minor limit, it is difficult to determine which permit conditions limit emissions below the major source threshold. For example, the Nestle Purina PetCare Company, Permit No.74605, identifies that the facility has uncontrolled emissions above the major source threshold for PM_{10} and that a synthetic minor permit is required. However, the permit does not contain any PM_{10}-specific emission limits, monitoring, recordkeeping, or reporting requirements, or otherwise identify how PM_{10} emission are limited below the major source threshold.

6. Compliance

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

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

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

Discussion: The EPA's 2016 Clean Air Act Stationary Source Compliance Monitoring Strategy[51] recommends that permitting authorities perform Full Compliance Evaluations (FCEs) for most title V sources at least every other year. For the vast majority of title V sources, the EPA expects that the permitting authority will perform an onsite inspection to determine the facility's compliance status as part of the FCEs. During interviews, Department inspectors reported that the Department's major sources are inspected once a year. Thus, when permitting staff are working on a title V permit revision, they can check the compliance status of the facility as determined by the most recent inspection.

Recommendation: The EPA commends the ADEQ for performing FCEs of all title V sources annually.

6.2 **Finding:** The ADEQ's permitting and compliance managers communicate effectively with each other and meet routinely to discuss programmatic issues.

Discussion: The ADEQ's compliance manager and permit manager hold routine meetings to discuss permitting and compliance issues. Similarly, permitting staff indicated compliance staff are readily accessible if there are any questions regarding a source or a permit. However, as stated in Finding 2.1, even though the Compliance Unit is aware of each permit action being processed, the Compliance Unit's ability to make corrections to a permit may be hampered if their review of a draft permit is conducted after the permit is public noticed.

Recommendation: The EPA commends the ADEQ for good communication between permitting and compliance management and staff. We encourage the ADEQ to continue information sharing between permitting and compliance staff and managers. However, we recommend

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

including a compliance review of a permitting action prior to the public notice for a more thorough agency review (see Finding 2.1).

6.3 **Finding:** The Permits Unit reviews compliance reports before a permit renewal is issued and discusses compliance issues with the Compliance Unit.

Discussion: The ADEQ's TSDs for renewal permits have a section called "Compliance History" in which the permitting staff review compliance reports, inspection reports, and performance tests in the past five years of the permit. Permitting staff determine whether there are any open compliance cases and follow up with the Compliance Unit to determine whether the compliance requirements are being met. The Department usually relies on compliance orders when a facility is out of compliance. Compliance orders are where the Department and the permittee work collaboratively to establish milestones to return the permittee to compliance, as stated in A.R.S. 49-461. Compliance and permitting staff were generally not aware of any title V permits with compliance schedules.[52]

Recommendation: The ADEQ should continue to use all available tools to ensure facilities out of compliance return to compliance and continue its practice of reviewing a facility's compliance history as part of permit renewal actions.

6.4 **Finding:** The Permit Unit reviews all compliance and deviation reports and uses an internal decision matrix to determine whether to escalate issues to the Compliance Unit.

Discussion: Prior to inspections, the Compliance Unit reviews deviation, semiannual, and annual reports, but generally does not otherwise see deviations or potential violations unless the Permits Unit escalate instances of noncompliance to their unit. The Permits Unit follows a decision matrix to refer potential violations to the Compliance Unit. However, the decision matrix recommends a Notice of Violation (NOV) for situations that have been identified as high-priority violations by the EPA. Most interviewees agreed with the ADEQ's approach of working with sources to fix minor deviations and violations by issuing Notice of Opportunity to Correct Deficiencies (NOCs) instead of issuing NOVs. However, the interviewees were concerned that the emphasis on returning sources to compliance without monetary penalties makes it more difficult for sources to take compliance seriously. Additionally, Compliance Unit staff are generally not involved when issues are recommended for NOVs because they are handled by management. As a result, compliance staff are often unaware when NOVs are issued.

As noted in the EPA Region 9 enforcement division's July 29, 2015 State Review Framework (SRF) for ADEQ,[53] "the NOV/NOC decision matrix raises concern and indicates a lack of adequate responsiveness/seriousness to both reporting violations and emission violations that exceed the limit. The EPA acknowledges that Arizona lacks administrative penalty authority which constrains its ability to assess penalties for many medium and smaller cases. Lack of

[52] See 40 CFR 70.5(c)(8) and 70.6(c)(3), (4).

[53] Appendix F.

administrative authority, however, does not relieve the state of its obligation to pursue timely and appropriate enforcement actions."

Recommendation: The EPA recommends the Department continue to follow the EPA's guidance on high priority violations, but we also recommend the Department evaluate whether its overall approach to compliance and enforcement ensures NOVs are not handled arbitrarily.

7. Resources and Internal Management

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

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

7.1 **Finding:** The ADEQ permitting and compliance staff report that they receive effective legal support from both the Attorney General's office as well as an in-house attorney.

Discussion: The ADEQ relies mostly on in-house attorneys that are more knowledgeable in complex air quality issues to represent and advise the ADEQ on air quality permitting and enforcement matters. They also participate in any meeting at which the ADEQ meets with a permittee or others who have legal counsel.

During our site visit, interviewees reported that they receive effective legal support from both the Attorney General's office and its in-house attorney. The in-house attorney meets with the ADEQ staff and managers about once a month.

Recommendation: The ADEQ should continue to ensure that it receives effective legal support.

7.2 Finding: In preparing its initial response to the EPA's evaluation questionnaire and during the EPA's site visit, the ADEQ was unable to provide information identifying the revenue and expenses associated with the ADEQ's title V permitting program.[54]

Discussion: The Part 70 regulations require that permit programs ensure that the collected title V fees are adequate to cover title V permit program costs and are used solely to cover the permit program's costs.[55] The ADEQ uses the Air Permits Administration Fund (APAF) to administer funding to their title V and non-title V permitting programs. At the conclusion of the EPA's 2006 title V evaluation effort[56] the ADEQ indicated that they had transitioned to accounting practices that allowed for easy identification of non-title V revenue and expenses, and title V revenue and expenses. However, this distinction proved to be challenging during the current evaluation effort. In preparing its initial response to the EPA's evaluation questionnaire and during the EPA's site visit, the ADEQ was unable to provide information identifying the revenue and expenses associated with the ADEQ's title V permitting program. After the EPA's site visit, the ADEQ provided the EPA with suitable documentation to support the conclusion that the ADEQ title V permitting program is effectively funded and implemented.

As noted in the 2006 Report, the ability to distinguish title V funds from non-title V funds is essential to ensuring that an implementing agency's title V permitting program is funded in a sustainable manner in accordance with Clean Air Act Section 502(b)(3) and longstanding associated implementation guidance.[57] In addition, the ADEQ's inability to distinguish title V permitting fee funds from other funds in the APAF may have made the funding associated with the sustainable implementation of the ADEQ title V permitting program more susceptible to diversion for purposes wholly unrelated to the sustainable administration of the ADEQ title V permitting program (see finding 7.3 below).

At the time of the site visit, the ADEQ acknowledged that it must be able to identify title V funds from non-title V funding in the APAF. The ADEQ further committed to separately identifying and tracking title V from non-title V funds in the APAF and was already working towards that goal. We worked closely with ADEQ over the past several months to develop a solution to these issues and identified a several actions. See Finding 7.3 below with a summary of the actions.

Recommendation: The ADEQ must be able to identify tile V funds from non-title V funding in the APAF and should complete these efforts per their commitment, as quickly as possible to assure appropriate tracking of title V funds.

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[54] ADEQ was able to identify that the title V permitting revenue and expenses are a component commingled with other permitting funds in the Air Permitting Administration Fund (APAF).

[55] See 40 CFR 70.9(a).

[56] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 7.4.

[57] See EPA's August 4, 1993 initial fee guidance, "1993 fee schedule guidance." See also the EPA's March 27, 2018 guidance documents "Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V" and "Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70."

7.3 Finding: From 2008 to 2020, portions of the ADEQ permitting fee revenue from the Air Permits Administration Fund (APAF) was diverted from the ADEQ permitting program to support other programs and the Arizona General Fund.

Discussion: As discussed in Finding 7.2, any fee required by a Part 70 program must "be used solely for the permit program costs." Working with the ADEQ, the EPA identified several instances of air permit funding transfers from the APAF to other programs unrelated to the operation of the ADEQ title V program. Once the transfers were identified, the ADEQ and the EPA analyzed the amounts diverted over the timeframe covering State fiscal years 2008 through 2020 to determine if the funding amounts diverted from the APAF to other programs were greater than those non-title V funds contained in the APAF. Based on the analysis performed, while there may have been certain timeframes where the funds diverted were greater than the non-title V funds available in the APAF, over the entire timeframe, the amounts diverted from the APAF were such that the diversions could reasonably be assumed to have all been from the non-title V funding stream in the APAF.[58]

In further discussion with the ADEQ, the EPA learned that the diversions or transfers out of the APAF are performed by the State legislature with input from the ADEQ. If future transfers from the APAF will occur in this manner, it is necessary to change this process to ensure title V program fees are not transferred and are used solely for title V permit program costs. In the meantime, the EPA intends to monitor, with the ADEQ, this process once other measures are implemented, including establishing a department policy that prevents the transfer of title V funding from the APAF.

Recommendation: The ADEQ must change its funds tracking system to address this finding. In discussions and emails with EPA staff, the ADEQ has committed to accurately track title V revenues and expenditures to ensure the title V program is effectively funded and implemented from the APAF going forward.[59]Thus, we recommend that ADEQ work closely with EPA to develop such changes. The changes to the ADEQ's funds tracking system must be consistent with the requirement that fees collected for the title V program are only used for funding the title V program (see 40 C.F.R. Part 70.9(a)). The EPA and the ADEQ will monitor the APAF funds to determine the effectiveness of the new tracking system each year for the next five years and will work during this timeframe to ensure that the legislature is aware of the requirements found in the discussion for this finding consistent with 40 C.F.R. Part 70.9(a). To allow EPA to review the results of the new tracking system, we request that the ADEQ submit to the EPA a report that is consistent with the type of analysis found in Appendix E of this report within 3 months of the end of each State fiscal year for the next five years.[60] In the event that the EPA determines that the new tracking system is insufficient at any point during the reporting

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[58] For a detailed analysis of this information, please see Appendix E.

[59] See Appendix E of this report.

[60] The first report should be submitted to EPA by September 30, 2021 and cover the timeframe July 1, 2020 through June 30, 2021.

timeframe (or thereafter) described in this finding, the ADEQ commits to working with the EPA to develop a process to ensure title V revenues and expenses are accurately tracked to ensure compliance with the Clean Air Act.[61]

7.4 **Finding:** There is a process to escalate potential issues and empower staff to solve problems.

Discussion: The Department's staff report that supervisors and management are available for one-on-one consultation on title V permitting issues. Regular daily and weekly three-hour group meeting discussions are held with staff, supervisors, and management to resolve any potential issues. Further, all managers are required to hold structured, one-on-one meetings with their staff members twice a month. However, staff indicate that it can be hard to find available time to meet with managers one-on-one due to their busy schedules. Staff also state that some issues raised during group meetings are not relevant to the entire unit and extend the unit meeting longer than desired. However, the ADEQ management believes that the discussions that occur at the weekly Value Stream meetings are relevant to all team members and provide them broader context on how their work ties in with the strategic direction of the agency and Value Stream.

Recommendation: The EPA commends the ADEQ for empowering staff and encourages the ADEQ to balance one-on-one and group discussions on title V permitting issues.

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

Discussion: Based on our interviews, Department staff indicated that in-house training (classroom and one-on-one mentoring, for example) and some outside training is offered. The ADEQ's partnership with the Western States Air Resources Council has allowed the permitting staff to attend training sessions of varying complexity. In general, most staff agree they could get training on what they need, but some indicated they would like to be able to take refresher trainings. Inspectors would like more source-specific training, refreshers, and guidance on what management is looking for in inspection reports.

Recommendation: The Department's current training program provides a solid foundation for the title V program but could be enhanced by encouraging refresher trainings. Additionally, inspector trainings related to specific source categories and inspection report content is also recommended.

7.6 **Finding:** Most permitting staff are aware of environmental justice (EJ) but are not familiar with how the Department's EJ principles affect their work.

[61] See EPA's March 27, 2018 guidance documents "Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V" and "Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70"

Discussion: The ADEQ's EJ program was recently enhanced to show it met the requirements of 40 CFR part 7 and other nondiscrimination regulations, policy and guidance. The components of the ADEQ Nondiscrimination Program[62] include:

- A notice of nondiscrimination under the federal nondiscrimination statutes;
- Grievance procedures for complaints filed under the federal nondiscrimination statutes;
- Identification of a Department Nondiscrimination Coordinator and his/her role;
- An assessment of the ADEQ's obligation to provide access to LEP and disabled persons; and
- Public participation procedures.

The EPA has separately reviewed this program and has determined that the ADEQ has in place the appropriate foundational elements of a non-discrimination program.[63]

During our interviews of ADEQ staff, some of the permitting staff were unfamiliar with how the Department's EJ program impacts permitting.[64] Better understanding by ADEQ staff of the EJ program's impacts on permitting would likely improve implementation of both the permitting and EJ programs.

Recommendation: The ADEQ should continue to implement its EJ program and find ways to increase internal awareness among its permitting and compliance staff regarding the EJ program and how their work is tied to it. After the site visit, the Permits Unit added an Environmental Justice section into its TSD template. The ADEQ has also used the EPA screening tool, EJSCREEN, in its evaluations and is working with EPA to develop a robust process for the team to communicate with EJ communities on air quality permits and compliance issues. The EPA commends the ADEQ's effort in including EJ in its permit review.

7.7 **Finding:** The ADEQ focuses on succession planning in the event of unexpected retirements or departures.

Discussion: The Permits Unit and Compliance Unit both have several staff members with less than five years of experience and only a couple of employees with more than ten years of experience. However, the ADEQ is committed to promoting succession planning so that mission functions are not disrupted by staff turnover. Over the course of the last couple of years, the Air Quality Division reviewed various functions and identified certain functions as being "single points of failure." While many of the tasks within the Division can be fulfilled by alternate resources, there are certain functions that are unique by virtue of the complexity of the task or

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[62] See ADEQ "Nondiscrimination Program Plan, January 2017", revised January 10, 2018 and provided in Appendix G of this report.

[63] See letter from Lilian S. Dorka, Director, External Civil Rights Compliance Office, Office of General Counsel, to Misael Cabrera, P.E., Director, Arizona Department of Environmental Quality, dated July 7, 2017.

[64] Although there is a general awareness that language accessibility in the permitting program has improved. See finding 4.3 above.

the niche nature of the job skill that is necessary. The Division identified two positions with the Facilities Emission Control Value Stream as single points of failure--the role of an Agricultural Best Management Practices Inspector and that of the Asbestos NESHAP Inspector. To address the situation, the group prepared countermeasures. At a broad level, the countermeasures involved the development of "standard work" for all possible tasks and the cross training of other personnel to fulfill such tasks. The cross training involves on the job training with the subject matter expert as well as other external training opportunities.

The Department also offers incentives for employees who are considering retirement over the short-term. The Department offers a cash incentive for employees who can provide 6 months of advance notice. The idea is to encourage retiring staff to provide advance notice so the Department can use the 6 months to hire a replacement and afford the new hire time to learn from the retiring senior staff member so that there is an opportunity for the transfer of institutional knowledge. Additionally, the Permits Unit ensures that any permitting staff that has provided notice of retirement communicates with management regarding active permit work, historical permit information, and incomplete action items. This includes ensuring that "standard work" exists in the case that any work is the sole responsibility of the staff member.

Following the implementation of the Arizona Management System and the general drive to promote problem solving at a staff level, the ADEQ management identifies leaders of the future within the agency and mentors them by offering them an opportunity to work in the ADEQ Office of Continuous Improvement. The opportunity allows them to develop a skill set that makes them viable candidates for future ADEQ managerial opportunities. There is also a structured cadence of one-on-one meetings between staff and their managers to drive dialogue about how to facilitate their growth. For example, these discussions can include the GROW model (Goals, Reality, Obstacles/Options and Way Forward). Using this process, ADEQ strives to complement the transactional nature of day to day work with a longer-term vision to cultivate and develop future leaders.

Recommendation: The EPA commends the ADEQ on its focus on succession planning.

7.8 **Finding:** The ADEQ management sets aggressive timeframes for staff to process title V permitting actions.

Discussion: As discussed in Finding 5.1, the ADEQ does not have a backlog of title V actions and sets internal goals for processing permit actions that are shorter than the timeframes established in Part 70 and the ADEQ's approved Part 70 program. During interviews, permitting staff indicated these goals can cause confusion and/or stress.

Overwhelmingly, staff in the Permits Unit support issuing timely permit actions and developing methods for improvement. However, numerous staff also indicated that the short timeframes instituted by management appear to have been set arbitrarily and can lead to mistakes (see, e.g., findings in Section 2). In addition, staff feel rushed to complete title V renewals, but once complete, their permit package may remain unissued for weeks or longer waiting for the

permittee to pay fees before a final permit can be issued. Staff questioned the benefit of rushing to complete such actions when they could spend more time developing a better product and making fewer mistakes. Compliance staff also indicated that they often find mistakes in permits because permitting staff are rushed and copy and paste information without updating it.

Most of the staff in the Permits Unit have only a few years of experience, which could be contributing to the mistakes being made and to the confusion and/or stress related to internal goals. We did not find examples where the ADEQ's permit processing goals prevented staff from taking extra time to complete work, beyond the internal timeframes, when faced with challenging permitting issues. The ADEQ's management indicated they are aware that the internal goals can be stressful for some staff, which is a portion of performance evaluations, but it is not used as a basis to dismiss staff. As discussed in Finding 5.1, the ADEQ management also stated that they are supportive of continuous improvement and committed to reevaluating its existing processes. For example, the Permits Unit used Arizona Management System principles to evaluate the minor permit revision process for minor sources and determined that the touch time for reviewing the application and drafting the permit (10 days) should match the time frame for major sources (20 days) because the approach for minor NSR applicability was not substantially different.

Recommendation: The EPA recommends the ADEQ continue to ensure timely issuance of permits. We also encourage the ADEQ to continue reviewing internal procedures for potential actions that address the lack of experience among staff and help improve the quality and consistency of title V permits. We also recommend that management better communicate to staff its expectations related to the balance between timelines and completing work accurately.

8. Records Management

This section examines the system the ADEQ has in place for storing, maintaining, and managing title V permit files. The contents of title V permit files are public records, unless the source has submitted records under a claim of confidentiality. The ADEQ has a responsibility to the public in ensuring that title V public records are complete and accessible.

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

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

8.1 **Finding:** The ADEQ's Records Center has a central file system in the building and is well managed. It is a great improvement from our 2006 Evaluation finding.

Discussion: In our 2006 Evaluation finding,[65] the EPA found the ADEQ's central file system poorly managed and it was difficult to obtain requested folders and documents. During the current evaluation, the EPA was able to obtain requested files in a reasonable time. The ADEQ Records Center also maintains the permitting files in accordance with the ADEQ file retention policy.[66] The ADEQ's file retention policy keeps permitted major and synthetic minor source facility files permanently.

Recommendation: The EPA commends the ADEQ on its major improvement in organizing and retaining physical title V permit records.

8.2 **Finding:** The ADEQ uses an electronic database to track title V permits effectively, issue general permits, and assist in compliance reporting.

Discussion: The ADEQ uses several databases to track multiple activities within the Department. AZURITE (Arizona Unified Repository for Information Tracking of the Environment) is the Department's internal database, a java-based software that tracks all permitting "events" that go through the ADEQ. Some "events" include application receive/issuance dates, public notice/participation dates, and billables. In addition, it generates report and inspection IDs, tracks emission reduction credits, and produces reports including monitoring, compliance, and performance testing dates. The system does not store any documentation and is only for internal consumption. Almost all staff and managers agree that even though the system collects the data that is needed, it is a clunky and outdated system that either needs updating or should be moved to a newer system.

The ADEQ also uses myDEQ, an external-facing web-based portal developed in-house that has been in use since 2015. In 2019, ADEQ launched two new modules for submittal of compliance certifications and permit deviations. For compliance certifications, the sources can submit reports using approved templates that are also reviewed internally through the portal. Similarly, sources have the ability to submit self-reported excess emissions and permit deviation reports as required by their permits. The system has built in notifications to remind the sources to submit their reports and sends out emails if the reports are late. In addition to compliance reporting, sources are also able to submit general permit applications and receive automatically generated general permits through the myDEQ. This streamlined process reduces the amount of time spent on general permit issuances.

The ADEQ also uses the Retail Integration Cloud Service (RICS) as their fee management system to process invoices. RICS processes information from AZURITE such as updated fees/rates, billables and annual fees.

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[65] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 9.1.

[66] https://apps.azlibrary.gov/records/state_rs/Environmental%20Quality.pdf

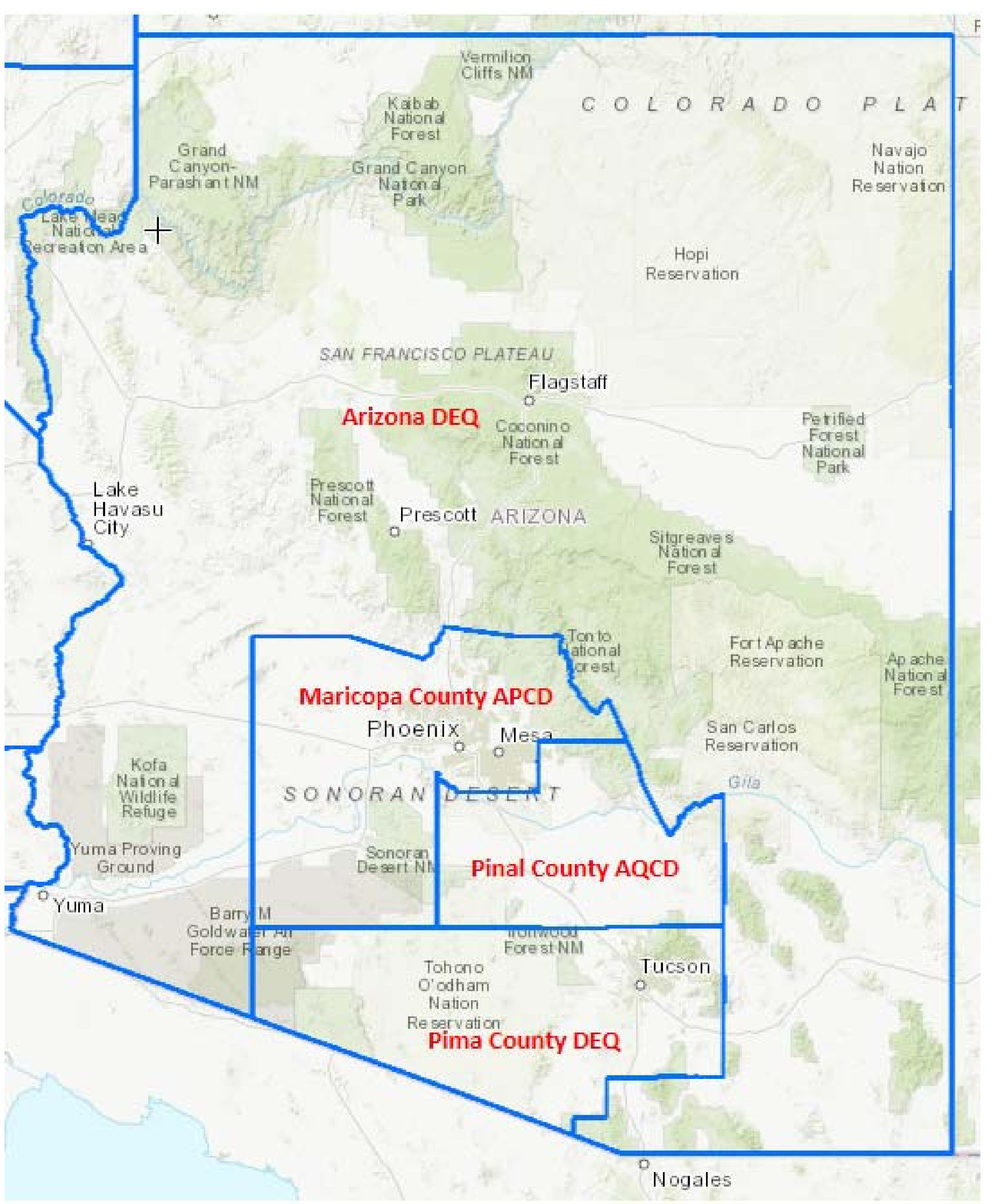
In our 2006 Evaluation,[67] the EPA recommended some potential improvements including storing the actual permit documents in the database system and linking fee information from accounts receivable so the ADEQ could access data such as payment of permit fees.

The ADEQ electronic files are currently kept in the Department shared drive, sorted by facility name and then action name. The EPA encourages ADEQ to investigate the feasibility of making all permit documents accessible through one of its database systems. This change would facilitate information sharing and ensure access to the correct version of the permit. The previous finding on linking fee information from accounts receivable has been addressed.

Recommendation: The EPA commends the ADEQ's efforts in creating myDEQ and automating many of the facility reporting functions. However, the EPA still recommends linking permit data to actual datafiles and linking fee information from accounts receivable so the ADEQ can access data such as payment of permit fees (see also Findings 7.2 and 7.3 above).

[67] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 9.2.

Appendix A. Air Pollution Control Agencies in Arizona


Vermilion Cliffs NM
COLORADO PLAT
Kaibab National Forest
Grand Canyon-Parashant NM
Grand Canyon National Park
Navajo Nation Reservation
Lake Mead National Recreation Area
Hopi Reservation
SAN FRANCISCO PLATEAU
Flagstaff
Arizona DEQ
Coconino National Forest
Petrified Forest National Park
Lake Havasu City
Prescott National Forest
Prescott
ARIZONA
Sitgreaves National Forest
Tonto National Forest
Fort Apache Reservation
Apache National Forest
Maricopa County APCD
Phoenix
Mesa
San Carlos Reservation
Kofa National Wildlife Refuge
Gila
SONORAN DESERT
Yuma Proving Ground
Sonoran Desert NM
Pinal County AQCD
Yuma
Barry M Goldwater Air Force Range
Ironwood Forest NM
Tohono O'odham Nation Reservation
Tucson
Pima County DEQ
Nogales

Appendix B. Title V Questionnaire and the ADEQ Responses

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

Title V Program Evaluation

Questionnaire

Contents

A. Title V Permit Preparation and Content 3

B. General Permits (GP) 7

C. Monitoring 8

D. Public Participation and Affected State Review 9

Public Notification Process 9

Public Comments 10

EPA 45-day Review 11

Permittee Comments 11

Public Hearings 11

Availability of Public Information 11

Affected State Review and Review by Indian Tribes 14

E. Permit Issuance / Revision / Renewal 15

Permit Revisions 15

Permit Renewal Or Reopening 16

F. Compliance 18

G. Resources & Internal Management Support 22

Environmental Justice Resources 24

H. Title V Benefits 26

A. Title V Permit Preparation and Content

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

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

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

    The Technical Support Document has a section called "Compliance History" in which the Permit Writer (PW) determines the number of reports reviewed, on-site inspections and performance tests in the past 5 years of the permit. The PW also determines whether there are any open cases and follows up with the Compliance Unit to determine whether the compliance requirements (if any) are being met.

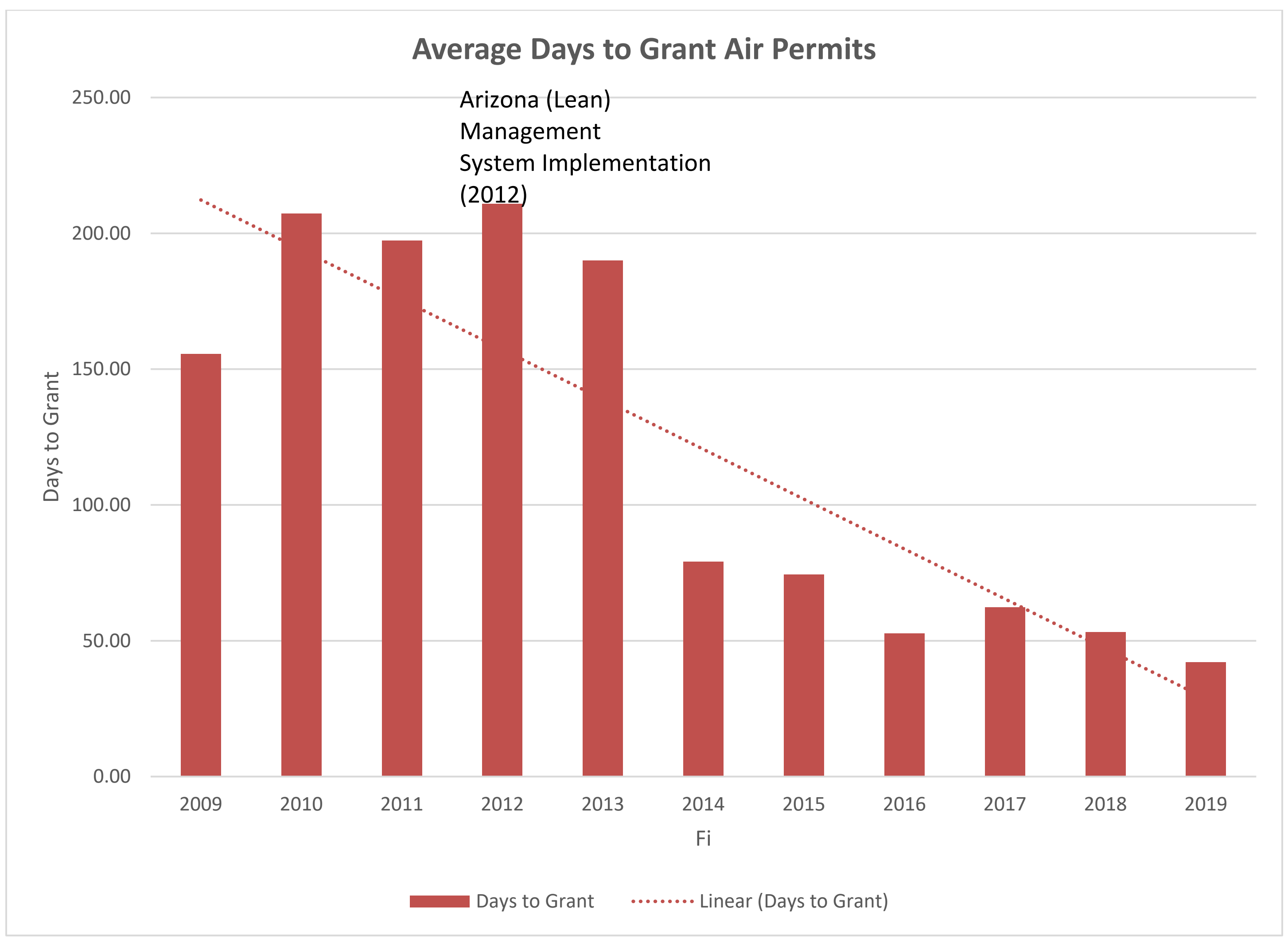
    a. In cases where a facility is either known to be out of compliance, or may be out of compliance (based on pending NOVs, a history of multiple NOVs, or other evidence suggesting a possible compliance issue), how do you evaluate and document whether the permit should contain a compliance schedule? Please explain and refer to appropriate examples of statements of basis written in 2005 or later in which the Department has addressed the compliance schedule question.

        The Department evaluates the implementation of a compliance schedule if and when a facility is out of compliance at the time the permit application is received. However, historically the most timely and environmentally protective response to a condition of noncompliance has been effective through informal enforcement procedures. One example of this is demonstrated in a consent order, where the Department and the Permittee work collaboratively to establish milestones to eventually return the Permittee to compliance as stated in Arizona Revised Statute 49-461.

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

    Since the state-wide implementation of the Arizona Lean Management System (now Arizona Management System (AMS)) in 2012, the Air Permits team has developed what we refer to as Standard Work (SW) to ensure each permit engineer knows the process steps for each permit type. Along with ensuring process rigor, the development of SW allows new employees to easily pick up the process steps, allowing for more time to be spent on technical aspects of the permitting process. Implementation of AMS also includes visual management and problem solving tools that are utilized to 1) identify potential permitting issues, 2) share those issues with the permitting team to leverage others' experience, 3) minimize idle time in the permitting process and 4) increase accountability as a collective team in permitting sources. See the chart below to see the decrease in days to grant permits over a 10-year span. Since our the last Title V evaluation, the team has developed Class I and Class II templates to be utilized for permit renewals and implemented the use of external regulatory frameworks/tools like RegScan to streamline rule review and increase understanding. ADEQ's partnership with the Western States Air Resources Council (WESTAR) has allowed the permit engineers to attend training sessions of varying complexity, both as a new learning opportunity and to reinforce elements of the Clean Air Act. Support for training and development and alignment with AMS ensures that permit engineers are supported to develop legally defensible permits. Over the years, the Agency has also developed two major guidance

documents that have also contributed to the improvement of permits: Air Dispersion Modeling Guidance and Minor New Source Review guidance.



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

   To ensure for quality control/quality assurance of permit actions, the associated permit documents go through different levels of review, starting with the Unit Manager and going up to the Division Director, where the Permit Engineer is required to answer questions on changes being made to the facility (as applicable) and ambient impacts (if any). Engineers are provided a checklist which they are expected to utilize in order to ensure that all required elements are contained in the both the draft/proposed permit and the corresponding Technical Support Document. In the recent past, the team has collectively analyzed data collected by the Unit Manager listing common errors or deficiencies found in draft permits to evaluate where there may be learning opportunities.

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

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

As a matter of practice, the permitting team will streamline the permit by prioritizing the most stringent obligation in the applicable requirements. At times, this determination considers Federal New Source Performance Standards and voluntary limitations over Arizona Administrative Code requirements but the scenario does not present itself very often.

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

   The pros of streamlining multiple overlapping requirements are better readability and flow of the permit, an easier way for the Permittee to consume and understand the permit, and better understanding from the perspective of the public. However, a con for streamlining permits can lead to inconsistencies in representing the severity of a violation with the potential for multiple independent obligations that have been streamlined.

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 format of ADEQ's air quality permits includes listing by process source and then by pollutant. In that way, the document is not only understood by industry-based permitting and compliance professionals, but also by the facility personnel that are held responsible for meeting conditions for each operation at their facility. Further, the inspectors that are visiting each facility are able to compartmentalize their inspection in order to assure complete review of all compliance requirements. However, there are permits that are very complex that have a large volume of applicable requirements that can be overwhelming and lose ease of readability.

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

   ADEQ's Statement of Basis or Technical Support Document has changed slightly over the years. While the subject headings and general information required has remained the same, the content has expanded slightly and on a case by case basis. For example, where a permit action requires modeling efforts either performed by the facility or internally by ADEQ, a robust analysis of dispersion modeling efforts is included in the TSD to ensure that the program is analyzing ambient impacts of the construction, modification or change at the facility. Refer to Attachment A for the Technical Support Document for the Rosemont Copper Mine to show the modeling discussion that is part of that permit renewal. Where the TSD lists compliance history, the current format ensures that compliance reporting and testing requirements are being assessed for the previous five year term but ADEQ acknowledges that a more comprehensive review of compliance updates should be included. In fact, the program is currently in the process of updating the TSD, evaluating what information, if any, from previous permitting actions are included and to what extent. Also, ADEQ currently strives to provide a plain-English interpretation of permit conditions so that the TSD is more effectively consumed by the public.

8. Does the statement of basis explain:

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

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? **Y**☒ **N** ☐

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

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

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

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

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

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

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

    f. Awaiting EPA guidance **Y**☐ **N** ☒

11. Any additional comments on permit preparation or content? N/A

B. General Permits (GP)

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

   a. If no, go to next section

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

ADEQ has the following issued General Permits in its jurisdiction:

- Hot Mix Asphalt Facilities
- Concrete Batch Plant Facilities
- Crushing and Screening Facilities
- Air Curtain Incinerator
- Soil Vapor Extraction Units
- Hospitals

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

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

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

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

   New and renewed general permits go through the public notice process. The notice is placed in a state-wide news publication and one publication for each county where the facility covered by the general permit may operate. General Permits public notice information can be obtained from the ADEQ website.

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

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

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

5. Any additional comments on general permits? N/A

The Hot Mix Asphalt, Concrete Batch Plant, and Crushing and Screening General Permits can be obtained through the myDEQ portal. Since its implementation about 3 years ago, it is the one-stop shop for the Arizona rocks products industry. The portal provides the general permit, tracks move notices, and facilitates the submittal of compliance reporting requirements.

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?

   Permit Writers are required to identify where there are gaps in compliance requirements for emission standards or limitations to ensure that limits are practically enforceable. The permitting templates facilitates viewing the permit easily by showing the emission limitation, monitoring, testing, recordkeeping and reporting requirements by pollutant. As and when a gap exists, the Permit Writer uses prior experience with similar facilities and engineering judgement to adapt a requirement that will eliminate the gap.

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

   ADEQ encourages that permit engineers to attend WESTAR and other EPA trainings as well as communicate internally with more experienced staff to develop effective monitoring requirements.

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?

   Quite often, especially for older NSPS, NESHAP and state requirements. This includes performance testing where testing is not required by the rule. As an example, the Class I minor source permit for Alliance Metals requires testing of D/F at the facility every 23-25 months. The applicable rule requires testing once every five years for major sources and only an initial test for minor sources.

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

   Approximately 14. Printpack and American Woodmark are two examples of sources which have CAM plans.

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

   No, however the Department required a plan submitted by a cement facility to be modified when it was determined to be deficient.

D. Public Participation and Affected State Review

Public Notification Process

1. Which newspapers does the Department use to publish notices of proposed title V permits? Please refer to Attachment B for the current publication list used by the Department.

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

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

   a. If so, how common is if for the Department to publish multiple notices for one permit? Very common. A notice is published twice for each applicable permit action.

   b. How do you determine which publications to use? The Department determines which publications have general circulation in each county and determine which to use based on proximity to each source. More often than not, publication options are limited to a few for each county so the publications do not vary much.

   c. What cost-effective approaches have you utilized for public publication? None.

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

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

   b. How does a person get on the list? (e.g., by calling, sending a written request, or filling out a form on the Department's website) Calling or sending a request or emailing the Permitting team at airpermits@azdeq.gov.

   c. How does the list get updated? There are two sources of the list; the emails are kept in spreadsheet and the physical addresses are maintained in a word document.

   d. How long is the list maintained for a particular source? The list is maintained indefinitely and names are removed only upon request.

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

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

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

   An example can be found here.

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

Use of the website is the most accessible and the most efficient.

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

   The Department translates public notice documents upon request by a member of the public.

Public Comments

9. How common has it been for the public to request that the Department extend a public comment period? Not common.

   a. Has the Department ever denied such a request? **Y**☒ **N** ☐
   b. If a request has been denied, what were the reason(s)? The Rosemont renewal permit public comment period extension was denied. Denial of the extension was based on the Agency's determination that the permit renewal addressed minimal changes from the initial permit. Minimal interest from the community and complexity of the permit were also factors.

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

11. Approximately what percentage of your proposed permits has the public commented on? <5%

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

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

    Typically, the majority of comments are not based on regulatory or technical aspects of the permit action but rather the location or zoning process, lack of understanding of the scope of the air permitting process, and environmental but non-air related inquiries (effects on groundwater quality, etc.)

    a. What percentage of your permits change due to public comments? <10%

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? **Y**☐ **N** ☒

    a. If not, what type of changes would require you to re-propose (and re-notice) a permit for comment? The public notice rules do not specify whether or when draft permits need to be re-proposed for public notice. As a matter of practice, the Department will evaluate whether re-proposing for public comment

is needed based on substantial changes, especially any changes that result in the relaxation of permit requirements.

EPA 45-day Review

16. What permit types do you send to the EPA for 45-day review? Class I new permits, renewals and revisions.

17. Do you have an arrangement with the EPA region for its 45-day review to start at the same time the 30-day public review starts? (aka "concurrent review) **Y**☒ **N** ☐

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

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

       ADEQ has not established a mechanism to show that the public notice period and the EPA's review period are concurrent.

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

Permittee Comments

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

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

    a. Any trends in the type of comments? They can but feedback is usually provided prior to public comment during source review.

    b. How do these types of comments or other permittee requests, such as changes to underlying NSR permits, affect your ability to issue a timely permit? These comments don't affect the Department's ability to issue a timely permit.

Public Hearings

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

    Written or emailed request from Permittee or member of the public. Typically, the Department does not deny a public hearing request.

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

Availability of Public Information

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

    If the requested document is used for a commercial purpose, a charge is incurred. No charges are incurred for the request of documents during the public notice period or on behalf of a non-profit organization.

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

       ADEQ offers the following Commercial Purpose Lists for $500 each:

       AZPDES Multi-Sector General Permit permittees
       AZPDES Construction General Permit permittees
       Individual APP AZPDES Permit
       List All APP Permits Drywells
       Drinking Water and Wastewater Operator Certification
       Air Permits - Major Sources
       Air Permits - Minor sources
       UST Facilities
       LUST Facilities
       Hazardous waste facilities
       Hazardous waste transporters
       Arizona drycleaner inventory
       VRP/Brownfield sites
       DUER Listing
       Standard lists may include facility name, address, contact name, and address. Custom lists are $500 plus $120/hour programming fee.

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

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

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

    During the public comment period, the draft permit and technical support document is available through the azdeq.gov website. The website also has a "MegaSearch" feature in which a request can be made for a specific document. Copies of the draft documents and the application are provided to the City Clerk's office as well as the Records Center. Other reports are available upon request through an online request form or in person.

    a. Are any of the documents available locally (e.g., public libraries, field offices) during the public comment period? **Y**☒ **N** ☐ **Please explain.** The City Clerk office has a copy of the permit application, the draft/proposed permit, TSD and the notice.

23. How long does it take to respond to requests for information for permits in the public comment period? Any request to the program is usually fulfilled electronically between 1-3 business days.

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

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

    26. What title V permit-related documents does the Department post on its website (e.g., proposed and final permits, statements of basis, public notice, public comments, responses to comments)? The notice, Proposed Permit and Technical Support Document are posted on the website.

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

    The ADEQ website is updated as necessary and when new documentation or templates become available. ADEQ has developed a landing page on the website where the public can access permitting and compliance documents and guidance related to the Department's air quality program.

    b. Do you provide public commenters with final Title V permit documents?

    Yes, any person or entity that provides a comment during the public comment period receives a copy of the permit as well as the technical support document and a responsiveness summary.

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

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

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

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

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

    a. Where are they in the organization?

    b. What is their primary function?

    ADEQ has a Community Liaison Program in which there are a group of individuals that are responsible several counties within the state. The State is separated into 6 regions. The community liaisons act as a bridge between the programs at ADEQ and the communities within each county as well as the regulated community. This includes responding to compliance assistance questions as well as reaching the right individuals when it comes to permitting inquiries.

Affected State Review and Review by Indian Tribes

32. How do you notify tribes of draft permits?

    There is currently no standardized notification process in place to directly contact tribal entities. The proposed permits are available through the website during the public participation period. In instances where there has been tribal involvement, ADEQ has engaged in collaborative conversations to address concerns. A good example is ADEQ's work with the tribes on permitting of the uranium mines.

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

    There are various facilities permitted by the Department that have been of particular interest to specific tribal communities. For example, Ute Mountain Ute Tribe has been involved in the permitting process for the uranium mines.

34. Please provide any suggestions for improving your notification process.

35. Any additional comments on public notification?

The Department acknowledges that there should be a more involved effort on the Air Permitting Program's behalf to notify tribal entities of permit actions.

E. Permit Issuance / Revision / Renewal

Permit Revisions

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

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

2. Approximately how many title V permit revisions have you processed for the last five years? 175

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

Significant:	8%
Minor:	31%
Administrative:	8%
Off-permit:	53%
502(b)(10):	-

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

   a. A significant permit revision? 168.91

   b. A minor revision? 45.29

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

      The last instance in which the Department took longer than the timelines described was in 2014 for a minor permit revision that was processed in 126 days for one of the smelter facilities.

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

   The Department's Air Permits Unit has standard work documentation for how to process revision applications. APU has also developed templates for the statement of basis that accompanies revisions. Revisions are held to stringent timelines. Minor Permit Revisions for Class I and Class II facilities are required to be processed in 65 and 10 days, respectively. Significant Permit Revisions for Class I and Class II facilities are required to be processed in 150 and 100 days, respectively. Administrative Amendments for Class I and Class II facilities are required to be processed in 2 and 1 day(s), respectively. Off-permit applications are required to be processed in 4 days for all permits.

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

Permit revisions applications are primarily tracked in ADEQ's AZURITE database. Additionally, each revision application that is received is tracked on the "APU Permits Flowboard," a visual management tool that is reviewed daily to address issues or used to highlight a question that a permit writer may have for a permit application. Unit Managers also received a tracking report showing days elapsed as of the day ADEQ received the application.

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

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

   Only for minor revisions for major source permits and for any Class II permit where the source has chosen to make the change prior to the permit being issued.

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

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

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).

    Changes to the permit are seen in red text.

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

    The legal notice indicates that the public can comment on the proposed permit revision.

Permit Renewal or Reopening

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

    a. If yes, what are the differences?

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

    Issuance of renewal permits is considered easier than original permits because the permit writers have a framework by which to start writing permit requirements and new templates that establish commonalities between all renewed permits. Tools such as RegScan provide a time-efficient way to determine if there are new requirements to each rule the facility is subject to. For example, RegScan can highlight all language

changes for a Federal rule as of the last finalized rule. If that rule was not changed as of the last renewal, the permit writer's regulatory review is substantially reduced and they can move on to QA/QC that all other requirements are included and review for regulatory updates for new processes or added equipment proposed in the application.

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

    Applicants are provided a checklist to help determine that all permit application requirements are being met.

15. What **percentage** of renewal applications have you found to be timely and complete for the last five years? 100%

16. How many complete applications for renewals do you presently have in-house ready to process? 10

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

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

    The Moss Mine permit is an example where the appropriate NESHAP was missing.

F. Compliance

Deviations

1. Deviation reporting:

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

      The Administrative Arizona Code R18-2-310.01 dictates that any emissions in excess of the limits established by…the applicable permit should report a 24-hour notification by telephone or facsimile within 24 hours of the time the owner or operator first learned of the occurrence of excess emissions and a detailed written notification within 72 hours of the notification. ADEQ also requires Permittees to submit permit deviations related to the operation of pollution control or monitoring requirements promptly as noted in the permit. Any other permit deviations that do not constitute excess emissions or require prompt delivery per the permit are submitted every 6 months. As of August 2019, Permittees have the ability to submit excess emission and permit deviation reports in the online compliance module that also accepts compliance certification submittals.

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

      The 24-hour notification for excess emission deviations is required to be submitted by phone or fax. However, the Agency has developed an online application in myDEQ where the 24-hour notification can be received.

   c. If yes, do you require a follow-up written report? **Y**☒ **N** ☐ If yes, within what timeframe? 72 hours.

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

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

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

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

         ADEQ Permit Writers strive to meet a 5-day timeline for review of permit deviations and excess emission reports and a 10-day timeline for review of all other reports. In that case, the Department will expect to receive a follow up from the Permittee in order to conclude the review.

2. How does your program define deviation?

   A deviation is defined as any instance, event or facility condition in which the facility violates a permit term or condition.

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

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

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

5. Do your deviation reports include:

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

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

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

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

Compliance Reports

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

   a. Deviation reports? **Y**☒ **N** ☐
      Review for completeness and respond with questions as necessary, identify if any compliance issues exist and "escalate" as needed to establish if a Notice of Violation or other enforcement action is appropriate.
   b. Semi-annual monitoring reports? **Y**☒ **N** ☐
      Review for completeness and respond with questions as necessary, identify if any compliance issues exist and "escalate" as needed to establish if a Notice of Violation or other enforcement action is appropriate.
   c. Annual compliance certifications? **Y**☒ **N** ☐
      Review for completeness and respond with questions as necessary, identify if any compliance issues exist and "escalate" as needed to establish if a Notice of Violation or other enforcement action is appropriate.

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

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

11. Compliance certifications

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

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

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

      iii. Do you require sources to use the form? **Y**☐ **N** ☒ If not, what percentage do? The form is newly formed, custom-built, launched in myDEQ in the past year, and the permits team is currently working on bringing each permittee into the system per their next compliance certification submittal.

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

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

12. Is your compliance certification rule based on:

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

Excess Emissions

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

   a. Provide relief from penalties? **Y**☒ **N** ☐
   b. Provide injunctive relief? **Y**☐ **N** ☒
   c. Excuse non-compliance? **Y**☒ **N** ☐

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

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

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

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

16. Any additional comments on compliance? -

G. Resources & Internal Management Support

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

   a. If so, what are they?

      Staff have multiple roles within the air permitting unit and are expected to adequately manage their time in order to effectively write permits and review monitoring and compliance reports. Among their core responsibilities they are also responsible for reviewing technical reports associated with the Regional Haze program, providing technical assistance to the Air Quality Improvement Planning group, and develop compliance certifications for the online submittal system, as well as develop permit determinations as needed.

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

   The Department has a recurring monthly event to showcase successes and provide recognition at the Agency-level for program accomplishments. This allows staff to be recognized for their efforts and provide the Agency visibility on the important work being done by the individual. The Agency also rewards employees for exemplary individual accomplishments with a Spotlight Award that includes a cash bonus.

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

   The implementation of the Arizona Management System, specifically the visual process adherence, keeps management up to date on where each permit is in the process and if any help is needed to ensure that permit issuance is on track. See Attachment C for the Permits in Process update provided to managers on a daily basis.

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

   ADEQ implements a daily meeting schedule regimen that allows for the timely identification of problems and the escalation of problems at the right level to promote a speedy resolution. The Air Permits Unit periodically engages in structured problem-solving techniques to reinforce concepts of continuous improvement.

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

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

   b. What is your title V fee? Please refer to Attachment D.

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

6. How do you track title V expenses?

Title V expenses are tracked in the Department's internal ADEQ system, myBudget.

7. How do you track title V fee revenue?

   Title V revenue is tracked in the Department's internal ADEQ system, myBudget.

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

   9 permit writers, 1 modeler, 1 intern

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

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

      Permit writers are expected to process both Title V and non-Title V permits. Percentage and time allocated varies as permit applications are received. The Unit Manager is expected to manage each permit writers' time to the extent that permits are prioritized, then report reviews and other program-related work.

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

      Staff time to process permits are considered billable and those hours are tracked in ADEQ's internal database, AZURITE.

10. Are you currently fully staffed? Yes

11. What is the ratio of permits to Title V permit writers? 44:1 (total)

12. Describe staff turnover.

    a. How does this impact permit issuance? An increase in staff turnover would potentially delay the timely issuance of permits and place stress on the current resources in the permitting unit.

    b. How does the permitting authority minimize turnover? Turnover is minimized by training resources, providing support to establish team rather than singular accountability, and by providing more competitive salaries with industry.

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

    Permit writers can take one of two career paths: technical or management.
    - Technical Career Path Roles: Environmental Engineering Specialist- I,-II, -III, Associate Engineer, Senior Engineer and Principal Engineer
    - Management Roles: Program Supervisor, Section Manager, Deputy Assistant Director, Assistant Director

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

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

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

    New permit writers are expected to attend training sessions on introductions to the Clean Air Act, effective permit writing, and PSD/NSR. More experienced permit writers are expected to attend more advanced permit writing sessions with case studies, source specific trainings and obtain a deeper understanding of advanced NSR. Trainings are primarily offered from WESTAR, but permit writers are supported to obtain training from other entities/groups as well. New employees also receive a program-specific on-boarding plan.

17. Does your training cover:

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

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

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

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

    It would be beneficial to the Department if EPA could provide more web-based training opportunities for permit writing.

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

    The Air Quality program at the Department is structured to combine permitting and compliance groups in one value stream to harmonize the services required by an air quality permit and this alignment allows for healthy interactions between permitting, compliance and enforcement staff to develop and implement an enforceable permitting program.

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

    For a resources and internal management support perspective, the biggest roadblock for the Department is the current experience gap, based on recent retirements of senior staff.

Environmental Justice Resources

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

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

    Screening for potential EJ issues is evaluated when public comments address a potential EJ case.

H. Title V Benefits

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

   a. NSPS requirements? **Y**☒ **N** ☐
   b. The stationary source requirements in the SIP? **Y**☒ **N** ☐
   c. The minor NSR program? **Y**☒ **N** ☐
   d. The major NSR/PSD program? **Y**☒ **N** ☐
   e. How to design monitoring terms to assure compliance? **Y**☒ **N** ☐
   f. How to write enforceable permit terms? **Y**☒ **N** ☐

2. In issuing initial title V permits:

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

   ADEQ permit writers are consistently reflecting on and evaluating permit requirements as they relate to monitoring and testing and leveraging those decisions for future renewal applications of other facilities.

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

   ADEQ permit writers evaluate permit language and address inconsistencies for permits for similar facility for the same company and in some cases, for facilities within the same source category.

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

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

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

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

b. SIP requirements ☒ ❑ ❑ ❑

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

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

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

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

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

☐ Netting actions
☐ Emission inventories
☐ Past records management (e.g., lost permits)
☒ Enforceability of PTE limits (e.g., consistent with guidance on enforceability of PTE limits such as the June 13, 1989 guidance)
☒ Identifying source categories or types of emission units with pervasive or persistent compliance problems; etc.
☒ Clarity and enforceability of NSR permit terms
☒ Better documentation of the basis for applicable requirements (e.g., emission limit in NSR permit taken to ☐ avoid PSD; throughput limit taken to stay under MACT threshold)
☐ Emissions trading programs
☐ Emission caps
☐ Other (describe)

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

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

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

Because ADEQ has a unitary permitting program – obligations for both Title V and NSR complemented each other during the permitting process.

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

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

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

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

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

    Permittees have expressed their satisfaction at having more streamlined permits that are easy to follow as opposed to multiple permits.

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

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

Good Practices not addressed elsewhere in this questionnaire

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

EPA assistance not addressed elsewhere in this questionnaire

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

    As mentioned previously, it would be beneficial for the ADEQ permitting and compliance groups to receive training offered on penalty calculation models such as BEN/ABEL.

Attachment A

Rosemont Copper Company Technical Support Document

TECHNICAL REVIEW AND EVALUATION
OF APPLICATION FOR
AIR QUALITY PERMIT NO. 67001

Rosemont Copper Company

I. INTRODUCTION

This Class II synthetic minor permit is issued to Rosemont Copper Company (Rosemont), the Permittee, for the construction and operation of an open pit copper mine facility to be located approximately 30 miles southeast of Tucson, west of State Highway 83, within Pima County, Arizona. The facility has an anticipated lifetime production of about 1,230 million tons of ore and waste rock and an anticipated operating life of approximately 20 years.

A. Company Information

1. Facility Name: Rosemont Copper Project

2. Facility Location: 21900 S Sonoita Highway
   Vail, Arizona 85641
   Approximately 30 miles southeast of Tucson

3. Mailing Address: 5255 E. Williams Circle, Suite 1065
   Tucson, Arizona 85711

B. Attainment Classification

The Sonoita area is in attainment for all criteria pollutants.

II. PROCESS DESCRIPTION

The Rosemont Copper Project will primarily mine copper along with minor quantities of molybdenum, silver and other by-products. The copper mineralization in the area is a sulfide ore with a cap of oxide copper close to the surface. The sulfide and oxide ore will be mined through conventional open pit mining techniques. Ore (mostly comprised of sulfide ore) will be processed by crushing, grinding, and floatation to produce a copper concentrate product, which contains copper, silver, and possibly small amount of gold. A molybdenum concentrate will also be produced.

Description of the various steps involved is outlined below:

A. Open-Pit Mining

Open pit mining activities will include drilling, blasting, loading and hauling of ore and development rock using large-scale equipment including rotary blast hole drills (diesel and electric powered), a hydraulic percussion track drill, electric and hydraulic mining shovels, front end loaders, off-highway haul trucks, crawler dozers, rubber-tired dozers, motor graders and off-highway water trucks. Ore will be transported to the primary crushing area or stockpiled.

B. Primary Crushing and Coarse Ore Stockpile

Ore trucks will either dump the ore into the crusher dump hopper or stockpiled near the primary crusher and loaded to the crusher using a front end loader and/or loader/truck operation. Primary crushed ore will be conveyed to the coarse ore stockpile to be located within the stockpile building.

C. Stockpile Reclaim

A reclaim tunnel will be installed beneath the stockpile that will draw ore via apron feeders and onto conveyor belts that discharge to the semi-autogenous (SAG) grinding mill.

D. Milling and Flotation

Ore will be ground in water to the final product size in a SAG mill primary grinding circuit and a ball mill secondary grinding circuit. The primary grinding SAG mill will operate in closed circuit with a trommel screen, pebble wash screen, and a pebble crusher. Undersize from the trommel screen will be conveyed to the SAG mill grinding circuit. Oversize will be sent to the pebble crusher for further processing and then returned to the SAG mill. Material from the SAG mill undergoes a flotation process to produce copper and molybdenum mineral concentrate slurries which will then be transported to the dewatering circuits.

E. Copper Concentrate and Molybdenum Concentrate Dewatering and Preparation for Shipment

Copper concentrate slurry will be dewatered and thickened in a copper concentrate thickener. Thickener underflow will be pumped to copper concentrate filters. Filter cake will be stockpiled in the copper concentrate load out building that will be trucked for shipment. Molybdenum concentrate slurry from the filter feed tank will be pumped to a filter press. The filter cake will be discharged to a dryer/electrostatic precipitator. Dried molybdenum concentrate is stored in storage bins, which is then bagged and then trucked for shipment.

F. Tailings Dewatering and Placement

Tailings slurry will be dewatered and thickened in tailings thickeners. Thickener underflow will be pumped to the tailings filters. Filtered tailings cake will be discharged to the tailings placement system via conveyor belts and stacker system. The tailings placement system will be used to deposit the filtered tailings behind large pre-formed containment buttresses constructed from waste rock in the two tailings storage areas. A dozer may be used to spread the filtered tailings where needed, including compaction to provide a firm surface for the conveyor and stacker systems.

G. Control Devices

Rosemont will operate high efficiency cartridge filter dust collectors, one electrostatic precipitator, two wet scrubbers, water sprays, and dust suppressants on haul roads to reduce PM_{10} emissions from the facility.

III. EMISSIONS

Table 1 Potential Emissions

Pollutant	Non-Fugitive Emissions (tons per year)	Fugitive Emissions (tons per year)
PM	50.23	4986.73
PM_{10}	24.73	1384.55
$PM_{2.5}$	8.55	156.28
NO_x	14.89	205.56
CO	8.36	810.13
SO_2	0.02	24.18
VOC	2.37	0.00
HAPs	0.04	2.69
GHGs	1663.83	4581.82

Since the facility is a non-categorical source under state law, fugitive emissions are not considered for major-source applicability determinations. The fugitive emissions, however, are accounted for in the modeling analysis to determine compliance with the National Ambient Air Quality Standards (NAAQS).

IV. APPLICABLE REGULATIONS

Table 2 displays the applicable requirements for each permitted piece of equipment along with an explanation of why the requirement is applicable.

Table 2 Verification of Applicable Regulations

Unit	Control Device	Rule	Discussion
Metallic Mineral Processing Equipment	Cartridge Filters, Electrostatic Precipitator, Scrubber & Water sprays	40 CFR 60.382(a) 40 CFR 60.382(a)(2) 40 CFR 60.382(b) 40 CFR 60.386(a) 40 CFR 60.386(b)(1) 40 CFR 60.386(b)(2) P.C.C Section 17.16.490 AZ SIP R9-3-521 A.A.C. R18-2-702	The crushers, screens, conveyor belt transfer points, storage bins and truck unloading are affected facilities located in a metallic mineral processing plant as defined in NSPS Subpart LL The non-NSPS equipment are subject to the state regulations.
Tailings Dewatering and Placement Miscellaneous Sources – Silos, Lime Storage Bins, Sodium Metasciliate Storage Bins, Flocculant Storage Bins, Guar and Cobalt Sulfate Feeders	Water sprays Dust suppressants Dust Collector	A.A.C. R18-2-730 A.A.C. R18-2-702 P.C.C. Section 17.16.430	The opacity standards from A.A.C R18-2-702 apply to existing stationary point sources. The standards from A.A.C. R18-2-730 apply to unclassified sources.
Internal Combustion Engines	N/A	40 CFR 60, Subpart IIII	These standards apply to internal combustion engines manufactured after 2006. New engines subject to Subpart IIII meet the requirements of NESHAP Subpart ZZZZ by complying with the requirements of NSPS Subpart IIII.
Fugitive dust sources	Water Trucks Dust Suppressants	A.A.C. R18-2 Article 6 A.A.C. R18-2-702	These standards are applicable to all fugitive dust sources at the facility.
Petroleum Liquid Storage Tanks - Gasoline	Submerged filling device; Pump/ compressor seals	AAC R18-2-710 40 CFR 63 Subpart CCCCCC	This standard applies to the gasoline storage tanks. NESHAP Subpart CCCCCC applies to gasoline dispensing facilities.
Diesel Storage Tanks	N/A	A.A.C. R18-2-730	These standards apply to unclassified sources.
Laboratory Dust Collector	Dust Collector	A.A.C. R18-2-721, 702 AZ SIP Provision R9-3-521	The PM limits from A.A.C. R18-2-721 and AZ SIP apply
Abrasive Blasting	Wet blasting; Dust collecting equipment; Other approved methods	A.A.C. R-18-2-702 A.A.C. R-18-2-726	These standards are applicable to any abrasive blasting operation.

Unit	Control Device	Rule	Discussion
Spray Painting	Enclosures	A.A.C. R18-2-702 A.A.C. R-18-2-727	This standard is applicable to any spray painting operation.
Demolition/renovation operations	N/A	A.A.C. R18-2-1101.A.8	This standard is applicable to any asbestos related demolition or renovation operations.
Mobile sources	None	A.A.C. R18-2-801	These are applicable to off-road mobile sources, which either move while emitting air pollutants or are frequently moved during the course of their utilization.

A number of the applicable regulations refer to the "property line" and whether emissions cross the property line. As applied to the Rosemont project, the Department construes the fence line that excludes the public from the Rosemont project pursuant to Attachment "B", Condition XIII as the "property line" for compliance purposes.

V. PREVIOUS PERMIT CONDITIONS

Permit No. 55223 was issued on January 31, 2013, for the operation of this facility. Table 3 below illustrates if a section in Permit No. 55223 was revised or deleted.

Table 3 Permit No. 55223

Section No.	Determination		Comments
	Revised	Delete	
Att. A.	X		General Provisions - Revised to represent most recent template language.
Att. B. II	X		Facility-Wide Requirements – Updated opacity requirements to include alternative monitoring method(s).
Att. B. II.A.2	X		Operating Limitations – Updated throughput rock mined and ammonium nitrate and fuel oil used during blasting.
Att. B. III	X		Table 1: Emission Limits updated.
Att. B. III.D.2	X		Air pollution control requirements updated.
Att. B. V		X	Boiler At Solvent Extraction/ Electrowinning (SX/EW) process no longer applicable to facility.
Att. B. VI	X		Fugitive Dust Requirements – Revised to represent most recent template language. Updated vehicle speed.
Att. C	X		Equipment list updated to reflect changes to facility.

VI. MONITORING REQUIREMENTS

A. Facility Wide

1. The Permittee is required to maintain, on-site, records of the manufacturer's specifications or an operation and maintenance plan for all equipment listed in the

permit.

2. The Permittee is required to keep records of dates and times when blasting is conducted along with the amount of Ammonium Nitrate/Fuel Oil (ANFO) used in the blast.

3. The Permittee is required to perform comprehensive annual preventative maintenance checks on all dust control equipment at the facility.

4. The Permittee is required to follow the procedures for reducing emissions as stated in the Dust Control Plan, Visual Observation Plan and Dry Stack Tailings Management Plan included in the permit.

5. The Permittee is required to conduct daily visible emissions survey at places where facility fugitive dust generating activities are within 300 feet of the property boundary line in accordance with EPA Method 22. If any visible emissions are observed crossing the property line, it shall be reported as excess emissions.

B. Metallic Mineral Processing Subject to NSPS Subpart LL

1. The Permittee is required to show compliance with the opacity standards by having a Method 9 certified observer perform weekly surveys of visible emission from the dust collectors and process fugitive emission points. The observer is required to conduct a 6-minute Method 9 observation if the results of the initial survey appear, on an instantaneous basis, to exceed the applicable standard or baseline opacity level.

2. The Permittee is required to keep records of the name of the observer, the time, date, and location of the observation and the results of all surveys and observations.

3. The Permittee is required to keep records of any corrective action taken to lower the opacity of any emission point and any excess emission reports.

4. The Permittee is required to monitor the flow rate and pressure drop across the scrubber (AE-13).

5. The Permittee is required to monitor the voltage and current across the electrostatic precipitator according to the manufacturer's specifications.

C. Internal Combustion Engines

1. The Permittee is required to record the hours of operation using a non-resettable hours meter and the reason for operation.

2. The Permittee is required to keep records of maintenance conducted on all engines.

D. Fugitive Dust

1. The Permittee is required to keep record of the dates and types of dust control measures employed.

2. The Permittee is required to show compliance with the opacity standards by having a Method 9 certified observer perform weekly surveys of visible emission from

fugitive dust sources. The observer is required to conduct a 6-minute Method 9 observation if the results of the initial survey appear on, an instantaneous basis, to exceed the applicable standard.

3. The Permittee is required to keep records of the name of the observer, the time, date, and location of the observation and the results of all surveys and observations.

4. The Permittee is required to keep records of any corrective action taken to lower the opacity of any emission point and any excess emission reports.

5. The Permittee is required to monitor the forecast and wind speeds and conduct inspections of tailings as deemed necessary.

E. Gasoline Storage and Dispensing

The Permittee is required to maintain monthly record of gasoline throughput, Reid vapor pressure and dates of storage and when the dates when the tank was empty. If the vapor pressure is greater than 470mm Hg, the Permittee is required to record the average monthly temperature and true vapor pressure of gasoline at such temperature. The Permittee is required to record and report any malfunction of operation and corrective actions taken.

F. Periodic Activities

1. The Permittee is required to record the date, duration and pollution control measures of any abrasive blasting project.

2. The Permittee is required to record the type and quantity of paint used, any applicable SDS, and pollution control measures of any spray painting project.

3. The Permittee is required to maintain records of all asbestos related demolition or renovation projects. The required records include the "NESHAP Notification for Renovation and Demolition Activities" form and all supporting documents.

G. Mobile Sources

The Permittee is required to keep records of all emission related maintenance performed on the mobile sources. The Permittee is required to purchase haul trucks that meet US EPA Tier 4 requirements.

H. Ambient Monitoring Requirements

Rosemont is required to install and operate a continuous PM_{10} monitor and meteorological monitoring. Rosemont will be required to operate the instruments at least 90 days prior to the startup of the mine operations. Quarterly and annual reports are required to be submitted electronically. The permit identifies specific requirements for the maintenance and calibration of the monitors. The ambient monitors will serve as Special Purpose Monitors (SPM) that would be maintained by Rosemont.

VII. TESTING REQUIREMENTS

The Permittee is required to perform an annual Method 5, 17 or 201A performance test for PM/PM_{10} on the control equipment to verify compliance with applicable emission standards.

VIII. COMPLIANCE HISTORY

To date, the facility has not been constructed. As such, no inspection of the facility has taken place. The Permittee has, however, submitted timely compliance certifications reports indicating status since permit issuance in January 2013.

IX. INSIGNIFICANT ACTIVITIES

Table 4 below, lists insignificant activities identified at the Rosemont project:

Table 4 Insignificant/Trivial Activities

Equipment Description	Maximum Size or Capacity	Verification of Insignificance
Diesel and Fuel Oil Storage Tank < 40,000 gallons	10,000 gal – Plant Diesel Storage Tank 10,000 gal – Diesel Exhaust Fluid (DEF) Tank #1 10,000 gal – Diesel Exhaust Fluid (DEF) Tank #2	A.A.C. R18-2-101.68.a.i
Miscellaneous Storage Tanks < 40,000 gallons	21,100 gal – Flocculant Mixing Tank 1,000 gal – Promoter Storage Tank/Standpipe 22,520 gal – Frother Storage Tank 31,700 gal – NaHS Storage Tank 9,500 gal – NaHS Distribution Tank 9,500 gal – Sodium Silicate Storage Tank 19,800 gal – Collector (SIBX) Storage Tank (reagent) 9,500 gal – Collector (SIBX) Distribution Tank (reagent) 9,500 gal – Lime Storage Tank 5,000 gal – 10W40 Oil Storage Tank 5,000 gal – 15W40 Oil Storage Tank 5,000 gal – 30W Oil Storage Tank 5,000 gal – 50W Oil Storage Tank 5,000 gal – 90W Oil Storage Tank 5,000 gal – Anti-Freeze Storage Tank #1 5,000 gal – Anti-Freeze Storage Tank #2 3,000 gal – Compressor Oil Storage Tank 3,000 gal – Gear Oil Storage Tank 5,000 gal – HV43 Storage Tank (hydraulic oil) 5,000 gal – Spare Lubricant Tank 5,000 gal – Used Oil Storage Tank Misc. small equipment mounted hydraulic oil tanks Misc. small oil/grease totes	A.A.C. R18-2-101.68.a.i
Batch Mixers	< 5 cu.ft.	A.A.C. R18-2-101.68.c.i
Wet Sand & Gravel Operations excluding crushing/grinding operations	< 200 tons per hour	A.A.C. R18-2-101.68.c.ii
Hand-held or manually operated equipment	Buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface, grinding, or turning of ceramic art work, precision parts, Leather, metals, plastics, fiberboard, masonry, carbon, glass, or wood	A.A.C. R18-2-101.146.b.i

Equipment Description	Maximum Size or Capacity	Verification of Insignificance
Lab Equipment used for chemical & physical analyses	Analytical laboratory equipment Small pilot scale R&D projects	A.A.C. R18-2-101.146.f.ii

X. AMBIENT AIR IMPACT ANALYSIS

This section summarizes the ADEQ's findings regarding the ambient assessment submitted by Rosemont in support of its Air Quality Class II Synthetic Minor Permit (Permit #55223) renewal. In 2012, ADEQ approved an ambient air impact analysis that Rosemont submitted as part of a Class II synthetic minor permit application. However, due to the revisions to the Mine Plan of Operations (MPO) compared to the 2012 submittal, the facility layout, process equipment and throughputs are changed. Additionally, the previously permitted heap leaching and solvent extraction/electrowinning (SX/EW) operations are no longer included. Since these changes may potentially affect the ambient impacts from the facility's emissions, ADEQ requested Rosemont perform dispersion modeling to demonstrate that the facility's emissions will not interfere with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The pollutants subject to this ambient assessment review are PM_{10}, $PM_{2.5}$, NO_X, CO and Ozone.

ADEQ reviewed the ambient air impact analysis following the EPA's Guideline on Air Quality Models (40 CFR Part 51 Appendix W)[1] and ADEQ's Modeling Guidelines for Arizona Air Permits (hereafter "ADEQ Guidelines").[2]

A. Model Selection

The American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) model is the EPA-preferred model for estimating impacts at receptors located in simple terrain and complex terrain (within 50 km of a source) due to emissions from industrial sources. Rosemont used AERMOD for the ambient impact analysis.

The AERMOD Modeling System consists of three major components: AERMAP, used to process terrain data and develop elevations for receptors; AERMET, used to process the meteorological data; and AERMOD, used to estimate the ambient pollutant concentrations. Rosemont used AERMAP version 11103; AERMET version 16216; and AERMOD version 16216r. These are the most recent versions of the AERMOD Modeling System.

B. Source Inputs

This section provides a discussion on source characterization to develop appropriate source inputs, including modeled emissions, source configuration and source types, Good Engineering Practice (GEP) stack heights, urban/rural determination of the sources, and off-site sources.

1. Sources of Emissions

The Rosemont project will include an open-pit mine and ore processing operations comprised of crushing, milling, flotation, concentrate and tailings filtering as well as waste rock and tailings management. The primary emission sources are fugitive emissions from haul trucks traveling on haul roads and tailpipe emissions. Other

[1] https://www3.epa.gov/ttn/scram/guidance/guide/appw_17.pdf
[2] http://static.azdeq.gov/aqd/modeling_guidance.pdf

emission sources include: wind erosion from tailings storage facility and stockpiles; fugitive emissions from truck loading/unloading and conveying transfer points; emissions from drilling and blasting; and emissions from dust collectors and emergency generators. The primary pollutants emitted are particulate matter (PM), NOx and CO.

2. Modeled Emission Rates

Rosemont developed an emission inventory based on the Year 9 mining plan which has the highest projected annual mining rate and highest haul truck travel, both in and outside of the pit. As fugitive emissions from haul roads and tailpipe emissions are the primary emission sources, ambient impacts from operations during all other years are anticipated to be lower than during Year 9. Rosemont estimated maximum short-term emission rates for all modeled pollutants using the maximum daily process rates for Year 9 with a safety factor. Rosemont estimated long-term average emissions rates for all modeled pollutants using the average daily process rates for Year 9, the year with the highest annual values.

3. Source Configurations and Source Types

Rosemont modeled the emissions from dust collectors and emergency generators as point sources. Stack parameters for the point sources were based on design parameters and/or conservative estimated values.

Rosemont used AERMOD's open-pit algorithm to characterize the emissions generated within the open-pit. Emissions from drilling, loading, hauling, water truck use, and support vehicle inside the pit were combined and modeled as a pit source. The same approach was also used to model the emissions emitted within the waste rock storage area as this area is surrounded by elevated berms that are built prior to each section of waste rock being placed, resulting in pit emission retention just like an open pit. The open pit source parameters for model inputs reflect the physical orientation and size (i.e., depth and horizontal dimensions) of the open-pit and the bermed area for Year 9.

Rosemont characterized the emissions from road ways outside the pit as a series of volume sources. Rosemont also characterized the fugitive emissions from material loading/unloading as well as material transfer points as volume sources. Additionally, Rosemont characterized the wind erosion from tailings storage facility and stockpiles as volume sources. The volume source parameters, including initial lateral dimension (σy_0), initial vertical dimension (σz_0) and release height, were estimated based on the horizontal and vertical dimensions of the volume source, following ADEQ Guidelines and the AERMOD User's Guide.

Rosemont characterized the emissions from blasting as volume sources, a recommended approach in ADEQ Guidelines. Since the Rosemont project anticipates routine blasting to occur between 12 PM and 4 PM, the variable emission rate option HROFDY in AERMOD was used to model the emissions between the above 4-hour intervals every day. ADEQ determined that this approach was acceptable.

Rosemont utilized the mine planning drawing for Year 9 of the mine life to estimate the base elevations, source dimensions and source locations. This

coincides with the maximum emissions year for the Rosemont project and the mining inputs used in the emissions calculations.

4. Good Engineering Practice (GEP) stack heights

Rosemont modeled all stacks with actual heights. Rosemont evaluated building downwash effects based on building and stack location and dimensions, and the EPA's Building Profile Input Program Plume Rise Model Enhancements (BPIP-PRME).

5. Urban/rural Determination

The rural/urban classification of an area is determined by either the dominance of a specific land use or by population data in the study area. The land-use procedure specifies that the land-use within a three-kilometer radius of the source should be determined using the typing scheme developed by Auer.[3] Rosemont determined the project site area as "Rural" based on the land use method.

6. Off-site (nearby) Sources

The EPA recommends that all nearby sources, that are not adequately represented by background ambient monitoring data, should be explicitly modeled as part of the NAAQS analysis. To determine which nearby sources should be explicitly modeled in the air quality analysis, the EPA has established "a significant concentration gradient in the vicinity of the source under consideration" as the sole criterion for this determination. There are no off-site stationary sources near Rosemont that would cause a significant concentration gradient within the vicinity of the project site. Therefore, there are no near-by sources that should be explicitly modeled. The impact from distant off-site sources are represented by background ambient monitoring data as discussed in **E**.

C. Meteorological Data

1. Meteorological Data Selection

For regulatory dispersion modeling analyses, 5 years of National Weather Service (NWS) station meteorological data, or at least 1 year of site-specific meteorological data, or at least 3 years of prognostic meteorological data should be used. Per Appendix W Section 8.4.2.d, "*If 1 year or more, up to 5 years, of site specific data are available, these data are preferred for use in air quality analyses*".

Rosemont initiated site-specific meteorological monitoring in April 2006. The meteorological monitor was located at the center of the proposed open-pit. The database, however, was not continuous as data between December 2006 and February 2007 were lost due to a data logger malfunction. After June 2009, quality control checks at the meteorological monitoring station were reduced so data quality at that station was no longer applicable for air modeling purposes. In the 2012 permit application, Rosemont used three full years of site-specific data from April 2006 to March 2009, with missing data periods filled in with data from other

[3] Auer, A.H. 1978. Correlation of Land Use and Cover with Meteorological Anomalies, Journal of Applied Meteorology, 17:636-643.

years for the same time period.

For this ambient impact assessment, ADEQ requested Rosemont conduct their modeling analyses based upon two full years of continuous data from March 2007 to February 2009, excluding the three-month missing meteorological data. Following the EPA's Meteorological Monitoring Guidance for Regulatory Modeling Applications, the two full years of site-specific data met QA/QC and completeness requirements.[4] The dataset also complies with the requirement of "at least 1 year of site-specific data" as specified in Appendix W Section 8.4.2. ADEQ further performed a sensitivity analysis to compare the modeled concentrations for the three-year dataset versus the two-year dataset, and found that the differences in modeled design concentrations were very marginal.

There is no age restriction on a meteorological data set. Appendix W Section 8.4.1b instead states that the data must "…b*e viewed in terms of the appropriateness of the data for constructing realistic boundary layer profiles and three dimensional meteorological fields…*" This approach is consistent with the general understanding that seasonal variations can be a larger factor in air quality assessments than the climatic variations that may occur over time. ADEQ determined that the site-specific meteorological data Rosemont collected during March 2007 through February 2009 were representative of transport and dispersion conditions between the sources of concern and areas where maximum design concentrations are anticipated to occur (the perimeter fenceline of the facility).

2. Meteorological Data Processing

Rosemont used the more recent version of AERMET meteorological preprocessor (v16216) to process two-years of site-specific data along with concurrent cloud cover data and upper air radiosonde data obtained from the Tucson NWS station. Rosemont also used the EPA's AERSURFACE tool (v13016) to calculate surface characteristic parameters (albedo, Bowen ration and surface roughness) required by AERMET.

<u>Arid Region vs. Non-Arid Region</u>

AERSURFACE requires the users to specify whether the project site is in an arid region or a non-arid region. Rosemont specified that the project site is in an arid region, which reflects the overall climatic conditions of the project site area. However, the summer monsoon rainfall may cause vegetative growth and thus affect the surface characteristic parameters. Specifically, the albedo and Bowen ratio are anticipated to be lower and the surface roughness higher during the monsoon season. ADEQ performed a sensitivity analysis to investigate the response of the modeled concentrations to the changes of surface characteristic parameters during the summer monsoon season. Since AERSURFAC does not allow the users to define "Arid Region" for one season (or months) while define "Not-Arid Region" for another season (or months), ADEQ manually modified the surface characteristic parameters during June-September in the AERSURFACE output file. As shrubland is the dominant land cover at the project site area, ADEQ selected the surface characteristic parameters during June-September based on Shrubland (Not-Arid Region) as listed in the AERSURFACE Surface

[4] https://www3.epa.gov/scram001/guidance/met/mmgrma.pdf

Characteristics Tables[5]. The sensitivity analysis revealed that the modification of the surface characteristics for the monsoon season resulted in a slight drop of the modeled design concentration for PM_{10}. Therefore, ADEQ determined that the use of the "Arid Region" through the whole modeled years was defensible and acceptable.

Cloud Cover Sensitivity Analysis

Cloud cover measurement is not typically available from site-specific monitoring programs. For applications of AERMOD, the cloud cover measurements from the nearest NWS station are routinely used. Rosemont used the cloud cover data obtained from the Tucson NWS station since the site - surface measurements did not include the cloud cover data. ADEQ performed a sensitivity analysis to investigate the effect of cloud cover on the model design concentration for PM_{10}. ADEQ tested two hypothetical meteorological datasets, one using only clear sky cover (CCVR =0) and one using only overcast sky cover (CCVR =10). ADEQ found that the variations in cloud cover did not substantially alter the modeling results. The difference between the two modeling runs was approximately 5 $\mu g/m^3$ while the dataset with clear skies showed slightly higher modeled concentration. ADEQ further modified the Tucson cloud data during June-September by increasing CCVR by 3, considering the Rosemont project site has more cloud cover and precipitation than the NWS Tucson station during the summer season. ADEQ found that the use of the modified cloud cover dataset yielded a similar modeled designed concentration for PM_{10} compared to the original Tucson cloud cover dataset. Based on the results of the cloud cover sensitivity analysis, ADEQ determined that the use of the cloud cover data obtained from the Tucson NWS station was acceptable.

D. Ambient Air Boundary and Receptor Network

The applicants are required to demonstrate modeled compliance with NAAQS at receptors spaced along and outside the ambient air boundary (AAB). For modeling purposes, the ambient air is "the air everywhere outside of contiguous plant property to which public access is precluded by a fence or other effective physical barrier".[6] The general public may not include mail carriers, equipment and product suppliers, maintenance and repair persons, as well as persons who are permitted to enter restricted land for the business benefit of the person who has the power to control access to the land.[7]

Rosemont is required to build fences or use other physical barriers to effectively preclude the public access. See the Draft Permit XIII - PUBLIC ACCESS RESTRICTIONS. Therefore, Rosemont used the perimeter fenceline as the ambient air boundary for modeling purposes. Following ADEQ Guidelines, Rosemont set up a receptor network to determine areas of maximum predicted concentrations. The grid spacing utilized for the receptors are as follows: process area boundary set at 25 m intervals; fine receptor grid of 100 m, extending from AAB to 1 km; medium receptor grid of 500 m, extending from 1 km to 5 km; coarse grid receptor grid of 500 m, extending from 5 km to 10 km. Rosemont used the AERMAP terrain processor (version 11103) to process the National Elevation Data (NED) data to

[5] https://www3.epa.gov/scram001/7thconf/aermod/aersurface_userguide.pdf
[6] U.S. EPA. 1985. Ambient Air. Regional Meteorologists' Memorandum dated May 16, 1985. Chicago, IL 60604.
[7] U.S. EPA. 2007. Interpretation of "Ambient Air" In Situations Involving Leased Land Under the Regulations for Prevention of Significant Deterioration (PSD). Stephen D. Page Memorandum dated June 22, 2007. Research Triangle Park, North Carolina 27711.

generate the receptor elevations and hill heights.

E. Background Concentration

Background concentrations should be representative of regional air quality in the vicinity of a facility. Typically, background concentrations should be determined based on the air quality data collected in the vicinity of the proposed project site. However, if there are no monitors located in the vicinity of the project, a "regional site" may be used to determine background concentrations. Per Appendix W Section 8.3.2 b, a regional site is "*one that is located away from the area of interest but is impacted by similar or adequately representative sources*." There is no cutoff of distance between the project site and the regional monitor. The key criterion is that the project site and the regional monitor should have a similar source impact.

1. Background Concentration for 24-hour PM_{10}

   Rosemont conducted PM_{10} monitoring in the vicinity of the project site from June 2006 to June 2009, yielding a little over twelve quarters of data. The highest concentration for 24-hour PM_{10} over the three-year period was 71.3 $\mu g/m^3$. While this monitored concentration appears to be a statistical outlier, the reasons resulting in this high concentration were unknown. Therefore, ADEQ requested Rosemont incorporate this value into the calculation of background concentration. Rosemont calculated the 24-hour PM_{10} background concentration based on the average of the highest 24-hour concentrations recorded for each year, which was 47.7 $\mu g/m^3$.

2. Background Concentration for 1-hour NO_2

   There are no monitoring sites in the immediate vicinity of the proposed Rosemont project site. Therefore, a "regional site" must be selected to determine the background concentration based on similar/representative source impacts. There are very limited NO_2 monitoring sites in Arizona and all monitoring sites are currently located in the Phoenix/Tucson metropolitan area. These urban monitors are significantly influenced by emissions from heavy vehicular traffic and industrial sources that do not exist near the Rosemont project site area.

   ADEQ has collected two-year hourly NO_2 ambient air monitoring data at the Alamo Lake site from July 2014 to June 2016. As the Rosemont site is similar to the Alamo Lake site in that the only sources of NO_2 are minor vehicle traffic, Rosemont selected the Alamo Lake site as a representative site for the background determination. To calculate the background concentration, the EPA recommends using the 98th percentile (the 8th highest) of the annual distribution of daily maximum 1-hour values averaged across the most recent three years of monitoring.[8] Rosemont used the highest 1-hour concentration of the two-year monitoring data as the 1-hour background NO_2 concentration. This method was conservative and acceptable.

   The Rosemont project is located approximately 30 miles southeast of Tucson. ADEQ determined that the Tucson/I-10 plume has an insignificant influence on the Rosemont project site. Neither of Tucson airport meteorological data nor Rosemont site-specific meteorological data supports that there is a significant connection between the Rosemont project site and Tucson/I-10 airshed. The

[8] https://www.epa.gov/sites/production/files/2015-07/documents/appwno2_2.pdf

presence of the mountain range between Tucson/I-10 and the Rosemont project site also substantially separates the Rosemont site from Tucson/I-10 airshed.

ADEQ further reviewed the historical NO_2 monitoring data collected from the Tonto National Monument site, which is located 35 miles east of the Phoenix metropolitan area. Unlike an infrequent connection between Rosemont and Tucson airshed, the connection between Tonto National Monument and Phoenix airshed is very strong and significant, mainly due to the prevailing western wind (from west to east) in the Phoenix area. Even under such conditions, the 1-hour NO_2 concentrations collected from the Tonto National Monument monitor were very significantly low (10-15 ppb) in comparison with those collected from Phoenix monitors (around 60-70 ppb). ADEQ also found that the 1-hour NO_2 concentrations from the Alamo Lake site and the Tonto National Monument site were comparable. Based on the historical monitoring data collected from Phoenix and the Tonto National Monument site, ADEQ determined that regional transport effects, if there are any, can be neglected for the background determination for 1-hour NO_2.

3. Background Concentration for $PM_{2.5}$

There are no $PM_{2.5}$ monitoring sites in the immediate vicinity of the Rosemont project site. ADEQ has identified two Interagency Monitoring of Protected Visual Environments (IMPROVE) sites that could be considered for determining the background concentration of $PM_{2.5}$: one is Saguaro National Park-East and the other is Chiricahua National Monument. The Saguaro National Park site is located in close proximity to the Tucson metropolitan area, and thus directly influenced by urban and industrial emissions from Tucson. Comparatively, the Chiricahua National Monument site is more representative of the Rosemont project site due to similar terrain features, elevation and source impacts. As discussed in E-2 above, there is no evidence to demonstrate that the Rosemont project site and the Tucson airshed are significantly connected. Therefore, Rosemont selected the Chiricahua National Monument site for the background determination. Rosemont calculated the annual $PM_{2.5}$ background value based on the average of the most recent three years of the annual average $PM_{2.5}$ concentrations. Rosemont calculated the 24-hour background $PM_{2.5}$ value based on the average of the 98th percentile 24-hour values measured over the last three years.

4. Background Concentrations for SO_2, CO and Annual NO_2

Rosemont used the ADEQ's recommended background concentrations for CO, annual SO_2 and annual NO_2. These values have long been used for permitting sources that are located in rural areas in Arizona. For 1-hour SO_2 background concentration, Rosemont selected the monitor with the highest monitoring concentrations in the Phoenix/Tucson areas. This method was conservative and acceptable.

F. One –Hour NO_2 Modeling Methodology

Per Appendix W Section 4.2.3.4-d, the EPA recommends three-tiered approach for 1-hour NO_2 modeling. Plume Volume Molar Ratio Method (PVMRM) and Ozone Limiting Method (OLM) are available as regulatory options in AERMOD as the preferred Tier 3 screening methods for NO_2 modeling. In general, ADEQ recommends using PVMRM for relatively isolated and elevated point sources, and using OLM for large groups of sources, area sources,

and near-surface releases (including roadway sources). Since the vast majority of the NO_2 emissions at the Rosemont project are from mobile sources with low-level plumes, Rosemont selected OLM for 1-hour NO_2 modeling. Rosemont used the "OLMGROUP ALL" option following the ADEQ's Modeling Guidelines. Two key model inputs for both the PVMRM and OLM options, namely in-stack ratios of NO_2/NO_X emissions and background ozone concentrations, are discussed as follows.

1. In-Stack Ratio

The modeled sources of NOx include mobile sources, stationary engines, and blasting sources.

Mobile Sources

In-stack NO_2/NOx for mobile sources must be representative of exhaust gases before leaving the tail pipe and before any mixing or oxidation by ambient air has occurred. To determine the representative NO_2/NOx estimates, the data must be sampled by either direct in-pipe measurement methods or by methods designed for mitigating oxidation from ambient ozone (such as measuring NO_2 and NOx inside of tunnels).

In the 2012 permit application, Rosemont provided a literature review and concluded a ratio ranging from 0.02 to 0.06 was appropriate for mobile sources. In this permit application renewal, Rosemont provided source-specific testing data from the manufacturer (Caterpillar), suggesting a lower NO_2/NOx ratio (0.01). Considering the ratio under the lab conditions may not reflect operating conditions as well as environmental conditions, Rosemont used a ratio of 0.05 for conservatism and also to be consistent with previous modeling.

Stationary Engines

Rosemont used an in-stack ratio of 0.065 for stationary engines based on the average of similar engines found in EPA's NO_2/NOx In-Stack Ratio (ISR) Database.[9] The database was sorted by engine type, fuel and engine capacity. The average of the ratios for reciprocating IC diesel engines, rating in size from 400 kW to approximately 1900 kW, was used to calculate the average for use in the model.

Blasting sources

Rosemont used an in-stack ratio of 0.1 for blasting based on field testing data presented in a scientific paper published in *Atmosphere Environment*.[10] A maximum in-stack ratio of 0.08 (rounded to 0.10 for input in the model) was

[9] https://www3.epa.gov/scram001/no2_isr_database.htm
[10] Attalla, et al, 2008. NOx emissions from blasting operations in open-cut coal mining. Atmosphere Environment, 42:7874–7883.

calculated based on ANFO blasting plume measurement results from blasting with ANFO.

2. Ozone Data

Rosemont used hourly ozone background concentrations obtained from the Clean Air Status and Trends Network (CASTNET) ozone monitor at the Chiricahua National Monument. ADEQ further reviewed the ozone data from the Green Valley site (the nearest monitoring site to Rosemont) and found that the hourly maximum ozone concentrations of the Chiricahua site are comparable or higher than Green Valley site. Therefore, ADEQ approved the use of the Chiricahua dataset since it would likely provide a relatively conservative estimation for the 1-hour NO_2 impacts from the proposed sources. For a single missing hour, ADEQ used linear interpolations to fill in the missing concentrations based on the previous and subsequent hour concentrations. For multiple missing hours, ADEQ calculated the maximum ozone concentration for each diurnal hour for each month and use these hourly maximum concentrations to fill in their corresponding missing diurnal hours. ADEQ provided hourly ozone dataset to Rosemont for modeling.

G. Methodology for Ozone and Secondary $PM_{2.5}$ Impacts Analysis

Per Appendix W Section 5.3.2 and Section 5.4.2, the EPA recommends a two-tiered demonstration approach for addressing single-source impacts on ozone and secondary $PM_{2.5}$. The first tier involves use of technically credible relationships between precursor emissions and a source's impacts that may be published in the peer-reviewed literature; developed from modeling that was previously conducted for an area by a source, a governmental agency, or some other entity and that is deemed sufficient; or generated by a peer-reviewed reduced form model. The second tier involves application of more sophisticated case-specific chemical transport models (e.g., photochemical grid models) to be determined in consultation with the EPA Regional Office and conducted consistent with new EPA single-source modeling guidance. It is anticipated that the case for using a full quantitative chemical transport model is rare.

One of the first-tier demonstration tools is Model Emissions Rates for Precursors (MERPs). The MERPs can be described as an emission rate of a precursor that is expected to result in a change in ambient ozone (O_3) or fine particulate matter ($PM_{2.5}$) that would be less than a specific air quality concentration threshold such as a significant impact level (SIL). Basically, if the emission rates of precursors for a proposed source are less than MERPs, it is concluded that the proposed source (1) will not cause or contribute to a violation of the NAAQS for ozone or (2) the secondary formation of $PM_{2.5}$ from the proposed source will be insignificant. For $PM_{2.5}$, the SILs the EPA recommends are 0.2 $\mu g/m^3$ and 1.2 $\mu g/m^3$ for annual NAAQS and 24-hour NAAQS, respectively.[11] For the 8-hour ozone NAAQS, the EPA recommends a SIL value of 1.0 parts per billion (ppb). Moreover, the EPA issued a

[11] U.S. EPA. Draft Guidance on Significant Impact Levels (SILs) for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program. Stephen D. Page Memorandum dated August 24, 2016. Research Triangle Park, North Carolina 27711.

draft guidance on development of MERPs as a Tier l demonstration tool for Ozone and $PM_{2.5}$.[12] At this time, both the SIL guidance and MERP guidance have not been finalized.

Per the ADEQ's request, Rosemont performed ozone impacts and secondary $PM_{2.5}$ formation analysis using the following methods:

- Rosemont used technically credible relationships between precursor emissions and a source's impacts based on the 2005 Four Corners Air Quality Task Force (FCAQTF) 12/4 km modeling database and a 2006 12 km modeling database covering eastern Utah and western Colorado (UT-CO 12 km domain). It was appropriate to use the two existing modeling databases due to the similarity between the modeled sources in the oil and gas (O&G) modeling and the Rosemont sources, as well as the similarity of background environment between the O&G modeling area and the Rosemont project area. Rosemont compared the NOx and VOC emissions from the Rosemont project to those of the various O&G complexes modeled, along with the modeled ozone impact of each O&G complex, to demonstrate that ozone impacts from the Rosemont project will be below an interim 8-hour ozone significant impact level (SIL) of 1.0 ppb.

- In the EPA's MERP draft guidance, the EPA investigated single source impacts on ozone and secondary $PM_{2.5}$ formation from some hypothetical sources and provided most conservative illustrative MERP values for VOCs, NOx and SO_2 for western US. Rosemont incorporated the draft guidance in the ozone impacts and secondary $PM_{2.5}$ formation analysis.

- ADEQ has developed a streamlined methodology to address the secondary formation of $PM_{2.5}$ under the minor NSR program. This methodology uses the "offset ratios" approach established by the National Association of Clean Air Agencies (NACAA) $PM_{2.5}$ Workgroup. Rosemont incorporated this methodology in the secondary $PM_{2.5}$ formation analysis. Rosemont calculated the emission ratio of the total equivalent primary $PM_{2.5}$ emissions to the primary $PM_{2.5}$ emissions. Rosemont then estimated the total impact from primary $PM_{2.5}$ and secondarily formed $PM_{2.5}$ by multiplying the modeled concentration for primary $PM_{2.5}$ by such emission ratio.

H. Model Results

1. Modeled Results for PM_{10}, Primary $PM_{2.5}$, NO_2, SO_2 and CO.

   Table 4 summaries the modeled results for PM_{10}, Primary $PM_{2.5}$, NO_2, SO_2 and CO. Representative background concentrations were added to modeled impacts and the total concentrations were then compared to the NAAQS. As shown in Table 4, emissions from the Rosemont project will not cause or contribute to a violation of the NAAQS under the operational limits/conditions as proposed in the draft permit. The AERMOD modeling analysis also revealed that the modeled design concentrations for all pollutants occurred within or near the ambient air boundary. Because PM_{10} is the primary pollutant of concern, ADEQ requires Rosemont to install and operate a PM_{10} monitor in the area, providing additional assurances that the project's operations are protective of NAAQS and public health.

[12] U.S. EPA. Guidance on the Development of Modeled Emission Rates for Precursors (MERPs) as a Tier l Demonstration Tool for Ozone and $PM_{2.5}$ under the PSD Permitting Program. Richard A. Wayland Memorandum dated December 2, 2016. Research Triangle Park, North Carolina 27711.

Table 4 Modeled Results for PM_{10}, Primary $PM_{2.5}$, NOx, SO_2 and CO

Pollutant	Averaging Period	Modeled Concentration (μg/m^3)	Background Concentration (μg/m^3)	Maximum Ambient Concentration (μg/m^3)	NAAQS (μg/m^3)
PM_{10}	24-hour	97.66	47.7	145.4	150
$PM_{2.5}$	24-hour	9.31	9.3	18.6	35
	Annual	2.91	3.2	6.11	12
NO_2	1-hour	127.5	26.3	153.8	188.6
	Annual	15.2	4.0	19.2	100
SO_2	1-hour	26.1	22.6	48.7	196
	Annual	0.03	3	3.03	80
CO	1-hour	1,711	582	2,293	40,000
	8-hour	277.6	582	859.6	10,000

2. Ozone Impacts

The 2005 FCAQTF modeling study shows that an O&G complex with NOx and VOC emissions on the order of 700-800 tons per year (tpy) resulted in 8-hour ozone impacts of approximately 1.2 ppb. The 2006 UT-CO modeling study shows that an O&G complex with NOx and VOC emissions, on the order of 100 tpy, resulted in 8-hour ozone impacts of approximately 0.1 ppb. The combined emission of NOx and VOC from the Rosemont Project is approximately 220 tpy. While the relationship between the combined emission of NOx and VOC emissions and the modeled ozone impact is not linear, modeled impacts generally increase with increases in emissions.

The EPA's MERPs draft guidance provides most conservative illustrative MERP values by precursor, pollutant and region. For Western US, the lowest MERPs for NOx and VOC are 184 tpy and 1,049 tpy, respectively. However, the lowest MERP of 184 tpy for NOx was based on the model results for a hypothetical 90-m stack that was located in North Dakota. The EPA modeled two hypothetical sources with a ground-level release in Arizona (one was located in Gila and the other in LA PAZ), which may be more be representative of Rosemont. These hypothetical sources have source derived NOx MERPs of 406.5 tpy and 213.7 tpy,

respectively, which are larger or comparable to the Rosemont's proposed emission of 220.5 tpy.

Based on the modeled results of the O&G modeling and the EPA's MERP modeling, it is appropriate to conclude that the 8-hour ozone impacts due to the emissions from the Rosemont project would be below the SIL of 1.0 ppb.

3. Secondary $PM_{2.5}$ Formation

Based the "offset ratio" approach as discussed in **G**, the total $PM_{2.5}$ 24-hour and annual modeled impacts (taking both primary $PM_{2.5}$ and secondarily formed $PM_{2.5}$ into account) from the Rosemont project were calculated to be 9.46 $\mu g/m^3$ and 2.96 $\mu g/m^3$, respectively. By adding the background concentrations to the modeled impacts, the total $PM_{2.5}$ 24-hour and annual concentrations were determined to be below the NAAQS.

For Western US, the lowest MERPs for NOx and SO_2 derived based on a critical daily $PM_{2.5}$ threshold of 1.2 $\mu g/m^3$ are 1,155 tpy and 225 tpy, respectively. The lowest MERPs for NOx and SO_2 derived based on a critical annual $PM_{2.5}$ threshold of 1.2 $\mu g/m^3$ are 3,184 tpy and 2,289 tpy, respectively. Both the proposed NOx and SO_2 emissions from the Rosemont project are well below the lowest $PM_{2.5}$ MERP value. Therefore, the potential contribution from secondary formation of $PM_{2.5}$ due to the emissions from the Rosemont project is expected to be insignificant.

XI. LIST OF ABBREVIATIONS

AAB .... Ambient Air Boundary
A.A.C. .... Arizona Administrative Code
ADEQ .... Arizona Department of Environmental Quality
AERMAP .... Terrain data preprocessor for AERMOD
AERMET .... Meteorological data preprocessor for AERMOD
AERMOD .... American Meteorological Society/EPA Regulatory Model
AERSURFACE .... Surface characteristics preprocessor for AERMOD
ANFO .... Ammonium Nitrate/Fuel Oil
AQD .... Air Quality Division
BPIP .... Building Profile Input Program
Btu/ft^3 .... British Thermal Units per Cubic Foot
CASTNET .... Clean Air Status and Trends Network
CO .... Carbon Monoxide
CO_2 .... Carbon Dioxide
ft .... Feet
g .... Grams
GEP .... Good Engineering Practice
HAP .... Hazardous Air Pollutant
hp .... Horsepower
hr .... Hour
IC .... Internal Combustion
IMPROVE .... Interagency Monitoring of Protected Visual Environments
ISR .... In-Stack Ratio
MERP .... Model Emissions Rates for Precursors
MMBtu .... Million British Thermal Units

g/m^3 .... Microgram per Cubic Meter
NAAQS .... National Ambient Air Quality Standard
NED .... National Elevation Dataset
NO_x .... Nitrogen Oxide
NO_2 .... Nitrogen Dioxide
NWS .... National Weather Service
OLM .... Ozone Limiting Method
O_3 .... Ozone
PRIME .... Plume Rise Model Enhancements
PVMRM .... Plume Volume Molar Ratio Method
Pb .... Lead
PM .... Particulate Matter
PM_{10} .... Particulate Matter Nominally less than 10 Micrometers
PTE .... Potential-to-Emit
SIL .... Significant Impact Level
SO_2 .... Sulfur Dioxide
TPY .... Tons per Year
TSP .... Total Suspended Particulate
VOC .... Volatile Organic Compound
yr .... Year

Attachment B

List of Publications

PUBLIC NOTICE PUBLICATION NEWSPAPERS
State-wide Publication
The Arizona Republic
APACHE COUNTY
Navajo Times
The White Mountain Independent
COCHISE COUNTY
Arizona Range News
San Pedro Valley News
Bisbee Observer
Sierra Vista Herald
COCONINO COUNTY
Arizona Daily Sun
Lake Powell Chronicles
Williams Grand Canyon News
Southern Utah News
GILA COUNTY
Arizona Silver Belt/San Carlos Apache Moccasin
Payson Roundup
GRAHAM COUNTY
Eastern Arizona Courier
GREENLEE COUNTY
Copper Era
LA PAZ COUNTY
Parker Pioneer
Todays News Herald
MARICOPA COUNTY
Arizona Business Gazette
Daily News-Sun
MOHAVE COUNTY
Kingman Daily Miner
Mohave Valley Daily News
The Standard
Today's News-Herald
NAVAJO COUNTY
The Tribune-News
White Mountain Independent
PIMA COUNTY
Arizona Daily Star (Account# 1000-2460)
PINAL COUNTY
Casa Grande Dispatch
SANTA CRUZ COUNTY
Nogales International
YAVAPAI COUNTY
The Bugle
The Verde Independent
The Daily Courier
Chino Valley Review
Prescott Valley Review
YUMA COUNTY
Bajo El Sol
Yuma Sun

Attachment C

Permits in Process

Valerie Thorsen <thorsen.valerie@azdeq.gov> :

Permits In Process - FEC :

TABLEAU-PRD@azdeq.gov <TABLEAU-PRD@azd q.g v> : Thu, Oct 3, 2019 t 8 01 AM :
T th rs n.v l ri @ zd q.g v

Facility Emissions Control has 0 General and 14 Individual Applications in Process - Updated 10/3/2019

All | Facility Emissions Control

Reviewer	LTF Category Description	LTF_ID	LICENSEE	Last Event	Last Event Date	LTF Day Remaining	TTS Hours	AC Loop	ANDD Loop	SR Loop	Receipt Date	RAIS Date	Public Date	Decision Date	Days
Arun Ghimire	Standard Class II renewal with no public heari..	78633	US ARMY - YUMA PROVING GROUNDS	RECV	9/26/19	276					9/26/19		12/11/19	1/5/20	7
Jennifer Paskash	Standard Class II permit with no public hearing	76632	ALLIANCE METALS ALUMINUM MANUFACTURING FACILITY	PDC	6/3/19	138	63				5/7/19		7/22/19	8/26/19	149
Joanie Wadas	Standard class I renewal permit with no publi..	78417	APS - FAIRVIEW GENERATING STATION	RECV	9/9/19	367					9/9/19		12/14/19	3/3/20	24
Karla Murrieta	Standard class I renewal permit with no publi..	78436	EL PASO NATURAL GAS CO - HACKBERRY COMPRESSOR ..	ACRD	9/16/19	331					9/11/19		12/16/19	3/5/20	22
	Standard Class II renewal with no public heari..	78010	GLENBAR GIN	ACRD	8/13/19	204					8/8/19		10/23/19	11/17/19	56
Mariana Mendez ar..	Class I minor revision	78223	FREEPORT-MCMORAN - MIAMI SMELTER	GIBR	9/30/19	76	11				8/23/19			10/28/19	41
Qinyue Mackey	Standard class I renewal permit with no publi..	78413	EL PASO NATURAL GAS CO - ALAMO LAKE COMPRESSOR ..	ACRD	9/16/19	332	17				9/11/19		12/16/19	3/5/20	22
	Standard Class II renewal with no public heari..	77414	BAGDAD MINE	ACRD	7/3/19	177	200				6/28/19		9/12/19	10/7/19	97
Vivek Kapur	Class I minor revision	78567	FREEPORT-MCMORAN - MORENCI	ACRD	9/24/19	96					9/16/19			11/21/19	17
	Standard Class II renewal with no public heari..	77717	CEMEX - #1970 - CBP	ACRX	9/20/19	230					7/23/19		10/7/19	11/1/19	72
William Barr	Dangerous material open burning permit	78667	US ARMY - YUMA PROVING GROUNDS	ACRX	9/27/19	17					9/20/19			10/20/19	13
	Standard class I renewal permit with no publi..	78289	EL PASO NATURAL GAS - WILLCOX COMPRESSOR STATION	ACRD	9/3/19	322	11				8/30/19		12/4/19	2/22/20	34
William Lichtenberg	Standard class I renewal permit with no public hearing	77724	SOUTH YUMA COUNTY LANDFILL	ERE	9/27/19	334	28				7/23/19		9/20/19	1/15/20	72
		78291	EL PASO NATURAL GAS CO - WENDEN COMPRESSOR STA..	ACRD	9/4/19	324	17				8/30/19		12/4/19	2/22/20	34

Attachment D

Permit Fee Schedule

PERMIT FEE SCHEDULE

www.azdeq.gov

Effective November 1, 2018

Application and Processing Fees

Individual Permits

Individual Permit Initial Application Fee .... None
Individual Permit Processing Fee (per hour) $162.40
Accelerated Permit Deposit $15,000
Administrative Amendments and Permit Transfers .... None

General Permits

General Permit Application Fee $500
Additional ATO Fee $500
Registration Application and Processing Fees........ None

Annual Fees Class I and Class II Synthetic Minor

Emission Based Fee (Class I only) $46.54/ton

Annual Administrative Fee (Class I and Title V Synthetic Minor Stationary Sources)

Source	Fee
Aerospace	$25,310
Air Curtain Destructors	$910
Cement Plants	$77,490
Combustion/Boilers	$18,830
Compressor Stations	$15,490
Electronics	$24,930
Expandable Foam	$17,860
Foundries	$23,750
Landfills	$19,420
Lime Plants	$73,200
Copper & Nickel Plants	$18,250
Gold Mines	$18,250
Mobile Home Manufacturing	$18,040
Paper Mills	$24,920
Paper Coaters	$18,830
Petroleum Products Terminals	$27,660
Polymeric Fabric Coaters	$24,920
Reinforced Plastics	$18,830
Semiconductors Fabrication	$32,770
Copper Smelters	$77,490
Utilities - Fossil Fuel Fired Except Coal	$20,000
Utilities - Coal Fired	$39,630
Vitamin/Pharmaceutical	$19,220
Wood Furniture	$18,830
Others	$24,930
Others with Continuous Emission Monitoring	$24,930

Annual Administrative Fee (Non-Title V Synthetic Minor Stationary Sources) $6,360
Annual Administrative Fee (Synthetic Minor Portable Sources) $9,820

Annual Fees Class II True Minor and Registrations

Title V

Individual Permit - Stationary Source $9,820
Individual Permit - Portable Source $9,820
General Permit $4,520

Non-Title V

Individual Permit - Stationary Source $6,360
Individual Permit - Portable Source $6,360
General Permit $3,020
Registrations .... None

Non-Title V vs. Title V status for the purpose of annual fees depends on the applicability of various federal regulations. Contact the Air Permits Unit at (602) 771-2338 for assistance in determining a facility's status.

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

Table of SOB guidance

Elements	Region 9's Febuary 19, 1999 letter to SLOC APCD	NOD to Texas' part 70 Program (January 7, 2002)	Region 5 letter to state of Ohio (December 20, 2001)	Los Medanos Petition Order (May 24, 2004)	Bay Area Refinery Petition Orders (March 15, 2005)	EPA's August 1, 2005 letter regarding Exxon Mobil proposed permit	Petition No. V-2005-1 (February 1, 2006) (Onyx Order)	EPA's April 30, 2014 Memorandum: Implementation Guidance on ACC Reporting and SOB Requiremetns for Title V Operating Permits
New Equipment	Additions of permitted equipment which were not included in the application					√		
Insignificant Activities and portable equipment	Identification of any applicable requirements for insignificant activities or State-registered portable equipment that have not previously been identified at the Title V facility					√		
Streamlining	Multiple applicable requirements streamlining demonstrations		Streamlining requirements	Streamlining analysis		√		
Permit Shields	Permit shields	The basis for applying the permit shield	√	Discussion of permit shields	Basis for permit shield decisions	√		
Alternative Operating Scenarios and Operational Flexibility	Alternative operating scenarios	A discussion of any operational flexibility that will be utilized at the facility.	√			√		
Compliance Schedules	Compliance Schedules				Must discuss need for compliance schedule for multiple NOVs, particularly any unresolved/outstanding NOVs	Must discuss need for compliance schedule for any outstanding NOVs		
CAM	CAM requirements					√		
PALs	Plant wide allowable emission limits (PAL) or other voluntary limits					√		
Previous Permits	Any district permits to operate or authority to construct permits		Explanation of any conditions from previously issued permits that are not being transferred to the title V permit	A basis for the exclusion of certain NSR and PSD conditions contained in underlying ATC permits		√		
Periodic Monitoring Decisions	Periodic monitoring decisions, where the decisions deviate from already agreed upon levels (eg. Monitoring decisions agreed upon by the district and EPA either through: the Title V periodic monitoring workgroup; or another Title V permit for a similar source). These decisions could be part of the permit package or reside in a publicly available document.	The rationale for the monitoring method selected	A description of the monitoring and operational restrictions requirements	1) recordkeeping and period monitoring that is required under 40 CFR 70.6(a)(3)(i)(B) or district regulation 2) Ensure that the rationale for the selected monitoring method or lack of monitoring is clearly explained and documented in the permit record.	The SOB must include a basis for its periodic monitoring decisions (adequacy of chosen monitoring or justification for not requiring periodic monitoring)	The SOB must include a basis for its periodic monitoring decisions. Any emissions factors, exhaust characteristics, or other assumptions or inputs used to justify no periodic monitoring is required, should be included in SOB		√
Facility Description		A description of the facility	√			√		
Applicability Determinations and Exemptions		Any federal regulatory applicability determinations	Applicability and exemptions	1) Applicability determinations for source specific applicable requirements 2) Origin or factual basis for each permit condition or exemption	SOB must discuss the Applicability of various NSPS, NESHAP and local SIP requirements and include the basis for all exemptions	SOB must discuss the Applicability of various NSPS, NESHAP and local SIP requirements and include the basis for all exemptions		√
General Requirements			Certain factual information as necessary	Generally the SOB should provide "a record of the applicability and technical issues surrounding the issuance of the permit."		√	√	√

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

February 19, 1999

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

Dear Mr. Dixon:

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

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

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

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

Sincerely,

Matt Haber
Chief, Permits Office

Enclosure

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

Enclosure

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

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

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

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

Part II - Title V Process

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

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

(Date)

Dear (APCO):

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

Sincerely,

Matt Haber
Chief, Permits Office

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

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

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

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

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

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

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

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

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

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

December 20, 2001

(AR-18J)

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

Dear Mr. Hodanbosi:

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,

/s/

Stephen Rothblatt, Chief
Air Programs Branch

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
LOS MEDANOS ENERGY	)	PETITION NO.
CENTER	)	ORDER RESPONDING TO
	)	PETITIONERS REQUEST THAT THE
MAJOR FACILITY REVIEW	)	ADMINISTRATOR OBJECT TO
PERMIT No. B1866,	)	ISSUANCE OF A STATE OPERATING
Issued by the Bay Area Air	)	PERMIT
Quality Management District	)	
	)	

ORDER DENYING IN PART AND GRANTING IN PART PETITION FOR OBJECTION TO PERMIT

On September 6, 2001, the Bay Area Air Quality Management District, ("BAAQMD" or "District") issued a Major Facility Review Permit to Los Medanos Energy Center, Pittsburg, California ("Los Medanos Permit" or "Permit"), pursuant to title V of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7661-7661f, CAA §§ 501-507. On October 12, 2001, the Environmental Protection Agency ("EPA") received a petition from Our Children's Earth Foundation ("OCE") and Californians for Renewable Energy, Inc., ("CARE") (collectively, the "Petitioners") requesting that the EPA Administrator object to the issuance of the Los Medanos Permit pursuant to Section 505(b)(2) of the Act, the federal implementing regulations found at 40 CFR Part 70.8, and the District's Regulation 2-6-411.3 ("Petition").

The Petitioners allege that the Los Medanos Permit (1) improperly includes an emergency breakdown exemption condition that incorporates a broader definition of "emergency" than allowed by 40 CFR § 70.6(g); (2) improperly includes a variance relief condition which is not federally enforceable; (3) fails to include a statement of basis as required by 40 CFR § 70.7(a)(5); (4) contains permit conditions that are inadequate under 40 CFR Part 70, namely that certain provisions are unenforceable; and (5) fails to incorporate certain changes OCE requested during the public comment period and agreed to by BAAQMD.

EPA has now fully reviewed the Petitioners' allegations. In considering the allegations, EPA performed an independent and in-depth review of the Los Medanos Permit; the supporting documentation for the Los Medanos Permit; information provided by the Petitioners in the Petition and in a letter dated November 21, 2001; information gathered from the Petitioners in a November 8, 2001 meeting; and information gathered from the District in meetings held on October 31, 2001, December 5, 2001, and February 7, 2002. Based on this review, I grant in part and deny in part the Petitioners' request that I "object to the issuance of the Title V Operating Permit for the Los Medanos Energy Center," and hereby order the District to reopen the Permit

for the reasons described below.

I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. In 1995, EPA granted interim approval to the title V operating permit program submitted by BAAQMD. 60 Fed. Reg. 32606 (June 23, 1995); 40 CFR Part 70, Appendix A. Effective November 30, 2001, EPA granted full approval to BAAQMD's title V operating permit program. 66 Fed. Reg. 63503 (December 7, 2001).

Major stationary sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes applicable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. See CAA §§ 502(a) and 504(a). The title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as "applicable requirements"), but does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, EPA, permitting authorities, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements. Thus, the title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under § 505(a) of the Act and 40 CFR § 70.8(a), permitting authorities are required to submit all operating permits proposed pursuant to title V to EPA for review. If EPA determines that a permit is not in compliance with applicable requirements or the requirements of 40 CFR Part 70, EPA will object to the permit. If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act and 40 CFR § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. To justify the exercise of an objection by EPA to a title V permit pursuant to section 505(b)(2), a petitioner must demonstrate that the permit is not in compliance with the requirements of the Act, including the requirements of Part 70. Part 70 requires that a petition must be "based only on objections to the permit that were raised with reasonable specificity during the public comment period. . ., unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period." 40 CFR § 70.8(d). A petition for administrative review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period and before receipt of the objection. If EPA objects to a permit in response to a petition and the permit has been issued, the permitting authority or EPA will modify, terminate, or revoke and reissue such a permit using the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

II. BACKGROUND

The Los Medanos Energy Center facility ("Facility"), formerly owned by Enron Corporation under the name Pittsburg District Energy Facility, is a natural gas-fired power plant presently owned and operated by Calpine Corporation. The plant, with a nominal electrical capacity of 555-megawatts ("MW"), is located in Pittsburg, California. The Facility received its final determination of compliance ("FDOC")[1] from the District in June, 1999, and its license to construct and operate from the California Energy Commission ("CEC")[2] on August 17, 1999. The Facility operates two large natural gas combustion turbines with associated heat recovery steam generators ("HRSG"), and one auxiliary boiler. The Facility obtained a revised authority to construct ("ATC")[3] permit from the District in March, 2001 to increase heat input ratings of the two HRSGs and the auxiliary boiler,[4] and to add a fire pump diesel engine and a natural gas-fired emergency generator. The Facility began commercial operation in July, 2001. The Facility emits nitrogen oxide ("NO_X"), carbon monoxide ("CO"), and particulate matter ("PM"), all of which are regulated under the District's federally approved or delegated nonattainment new source review ("NSR") and prevention of significant deterioration ("PSD") programs[5] or other District Clean Air Act programs.

On June 28, 2001, the District completed its evaluation of the title V application for the Facility and issued the draft title V Permit. Under the District's rules, this action started a simultaneous 30-day public comment period and a 45-day EPA review period. On August 1, 2001, Mr. Kenneth Kloc of the Environmental Law and Justice Clinic submitted comments to the

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[1] An FDOC describes how a proposed facility will comply with applicable federal, state, and BAAQMD regulations, including control technology and emission offset requirements of New Source Review. Permit conditions necessary to insure compliance with applicable regulations are also included.

[2] The FDOC served as an evaluation report for both the CEC's certificate and the District's authority to construct ("ATC") permit. The initial ATC was issued by the District shortly after the FDOC under District application #18595.

[3] ATC permits are federally enforceable pre-construction permits that reflect the requirements of the attainment area prevention of significant deterioration and nonattainment area new source review ("NSR") programs. The District's NSR requirements are described in Regulation 2, Rule 2. New power plants locating in California subject to the CEC certification requirements must also comply with Regulation 2, Rule 3, titled Power Plants. Regulation 2-3-405 requires the District to issue an ATC for a subject facility only after the CEC issues its certificate for the facility.

[4] The increased heat input allowed the facility to increase its electrical generating capacity from 520 MW to 555 MW.

[5] The District was implementing the federal PSD program under a delegation agreement with EPA dated October 28, 1997. The non-attainment NSR program was most recently SIP-approved by EPA on January 26, 1999. 64 Fed. Reg. 3850.

District on the draft Los Medanos Permit on behalf of OCE ("OCE's Comment Letter").[6] The District responded to OCE's Comment Letter by a letter dated September 4, 2001, from William de Boisblanc ("Response to Comments"). EPA Region IX did not object to the proposed permit during its 45-day review period. The Petition to Object to the Permit, filed by OCE and CARE and dated October 9, 2001, was received by Region IX on October 12, 2001. EPA calculates the period for the public to petition the Administrator to object to a permit as if the 30-day public comment and 45-day EPA review periods run sequentially, accordingly petitioners have 135 days after the issuance of a draft permit to submit a petition.[7] Given that the Petition was filed with EPA on October 12, 2001, I find that it was timely filed. I also find that the Petition is appropriately based on objections that were raised with reasonable specificity during the comment period or that arose after the public comment period expired.[8]

III. ISSUES RAISED BY THE PETITIONERS

A. District Breakdown Relief Under Permit Condition I.H.1

Petitioners' first allegation challenges the inclusion in the Los Medanos Permit of Condition I.H.1, a provision which incorporates SIP rules allowing a permitted facility to seek relief from enforcement by the District in the event of a breakdown. Petition at 3. Petitioners assert that the definition of "breakdown" at Regulation 1-208 would allow relief in situations beyond those allowed under the Clean Air Act. Specifically, Petitioners allege that the "definition of 'breakdown' in Regulation 1-208 is much broader than the federal definition of breakdown, which is provided in 40 CFR Part 70," or more precisely, at 40 CFR § 70.6(g).

Condition I.H.1 incorporates District Regulations 1-208, 1-431, 1-432, and 1-433 (collectively the "Breakdown Relief Regulations") into the Permit. Regulation 1-208 defines breakdown, and Regulations 1-431 through 1-433 describe how an applicant is to notify the District of a breakdown, how the District is to determine whether the circumstances meet the definition of a breakdown, and what sort of relief to grant the permittee. To start our analysis, it

[6] We note that OCE submitted its comments to the District days after the close of the public comment period established pursuant to the District's Regulation 2-6-412 and 40 CFR § 70.7(h)(4). Though we are responding to the Petition despite this possible procedural flaw, we reserve our right to raise this issue in any future proceeding.

[7] This 135-day period to petition the Administrator is based on a 30-day District public notice and comment period, a 45-day EPA review period and the 60-day period for a person to file a petition to object with EPA.

[8] In its Comment Letter, OCE generally raised concerns with the draft Major Facility Review Permit that are the basis for the Petition. In regard to whether all issues were raised with 'reasonable specificity,' I find that claims one through four of the Petition were raised adequately in OCE's Comment Letter. The fifth claim, that the District did not live up to its commitment to make changes to the Permit, can be raised in the Petition since the grounds for the claim arose after the public comment period ended. See 40 CFR § 70.8(d). Finally, CARE's non-participation in the District's notice-and-comment process does not prevent the organization from filing a title V petition because the regulations allow "any person" to file a petition based on earlier objections raised during the public comment period regardless of who had filed those earlier comments. See CAA § 505(b)(2); 40 CFR § 70.8(d)

is important to understand the impact of granting relief under the Breakdown Relief Regulations. Neither Condition I.H.1, nor the SIP provisions it incorporates into the Permit, would allow for an exemption from an applicable requirement for periods of excess emissions. An "exemption from an applicable requirement" would mean that the permittee would be deemed not to be in violation of the requirement during the period of excess emissions. Rather, these Breakdown Relief Regulations allow an applicant to enter into a proceeding in front of the District that could ultimately lead to the District employing its enforcement discretion not to seek penalties for violations of an applicable requirement that occurred during breakdown periods.

Significantly, the Breakdown Relief Regulations have been approved by EPA as part of the District's federally enforceable SIP. 64 Fed. Reg. 34558 (June 28, 1999) (this is the most recent approval of the District's Regulation 1). Part 70 requires all SIP provisions that apply to a source to be included in title V permits as "applicable requirements." See In re Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants, Petition No. VIII-00-1, at 23-24 ("Pacificorp"). On this basis alone, the inclusion of the Breakdown Relief Regulations in the permit is not objectionable.[9]

Moreover, Petitioners' allegation that Condition 1.H.1 is inconsistent with 40 CFR § 70.6(g) does not provide a basis for an objection. 40 CFR § 70.6(g) allows a permitting authority to incorporate into its title V permit program an affirmative defense provision for "emergency" situations as long as the provision is consistent with the 40 CFR § 70.6(g)(3) elements. Such an emergency defense then may be incorporated into permits issued pursuant to that program. As explained above, these regulations provide relief based on the District's enforcement discretion and do not provide an affirmative defense to enforcement. Moreover, to the extent the emergency defense is incorporated into a permit, 40 CFR § 70.6(g)(5) makes clear that the Part 70 affirmative defense type of relief for emergency situations "is in addition to any emergency or upset provision contained in any applicable requirement." This language clarifies that the Part 70 regulations do not bar the inclusion of applicable SIP requirements in title V permits, even if those applicable requirements contain "emergency" or "upset" provisions such as Condition 1.H.1 that may overlap with the emergency defense provision authorized by 40 CFR § 70.6(g).

Also, a review of the Breakdown Relief Regulations themselves demonstrates that they are not inconsistent with the Clean Air Act, and therefore, not contrary to the Act. A September 28, 1982, EPA policy memorandum from Kathleen Bennet, titled Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions ("1982 Excess Emission Policy"), explains that "all periods of excess emissions [are] violations of the applicable standard." Accordingly, the 1982 Excess Emission Policy provides that EPA will not approve automatic exemptions in operating permits or SIPs. However, the 1982 Excess Emission Policy also

[9]This holds true even if the Petitioner could support an allegation that EPA had erroneously incorporated the provisions into the SIP. See Pacificorp at 23 ("even if the provision were found not to satisfy the Act, EPA could not properly object to a permit term that is derived from a provision of the federally approved SIP"). However, as explained below, EPA believes that these provisions were appropriately approved as part of the District's SIP.

explains that EPA can approve, as part of a SIP, provisions that codify an "enforcement discretion approach." The Agency further refined its position on this topic in a September 20, 1999 policy memorandum from Steven A. Herman and Robert Perciasepe, titled State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown ("1999 Excess Emission Policy").[10] The 1999 Excess Emission Policy explained that a permitting authority may express its enforcement discretion through appropriate affirmative defense provisions approved into the SIP as long as the affirmative defense applies only to civil penalties (and not injunctive relief) and meets certain criteria. As previously explained, the Breakdown Relief Regulations approved into the District's SIP provide neither an affirmative defense to an enforcement action nor an automatic exemption from applicable requirements, but rather serve as a mechanism for the District to use its enforcement discretion. Therefore, I find that the provision is not inconsistent with the Act.

Finally, Petitioners allege that the inclusion of Condition I.H.1 "creates unnecessary confusion and unwarranted potential defense to federal civil enforcement." Inclusion of Condition I.H.3 in the Los Medanos Permit clarifies Condition I.H.1 by stating that "[t]he granting by the District of breakdown relief . . . will not provide relief from federal enforcement." Contrary to Petitioners' allegation, we find that addition of this language successfully dispels any ambiguity as to the impact of the provision, especially as it relates to federal enforceability, and therefore clears up "confusion" and limits "unwarranted defenses." For the reasons stated above, I deny the Petition as it relates to Condition I.H.1 and the incorporation of the Breakdown Relief Regulations into the Permit.

B. Hearing Board Variance Relief Under Permit Condition I.H.2

The Petitioners' second allegation challenges the inclusion in the Los Medanos Permit of Condition I.H.2, which states that a "permit holder may seek relief from enforcement action for a violation of any of the terms and conditions of this permit by applying to the District's Hearing Board for a variance pursuant to Health and Safety Code Section 42350. . . ." Petition at 3. Petitioners make a number of arguments in support of their claim that the reference to California's Variance Law in the Los Medanos Permit serves as a basis for an objection; none of these allegations, however, serves as an adequate basis for EPA to object to the Permit.

Health and Safety Code ("HSC") sections 42350 et seq. ("California's Variance Law") allow a permittee to request an air district hearing board to issue a variance to allow the permittee to operate in violation of an applicable district rule, or State rule or regulation for a limited time. Section 42352(a) prohibits the issuance of a variance unless the hearing board makes specific

[10] On December 5, 2001, EPA issued a brief clarification of this policy. Re-Issuance of Clarification – State Implementation Plans (SIPs); Policy Regarding Excess Emissions During Malfunction, Startup, and Shutdown.

findings.[11] Section 42352(a)(2) limits the availability of variances to situations involving non-compliance with "any rule, regulation, or order of the district." As part of the variance process, the hearing board may set a "schedule of increments of progress," to establish milestones and final deadlines for achieving compliance. See, e.g., HSC § 42358. EPA has not approved California's Variance Law into the SIP or Title V program of any air district. See, e.g., 59 Fed. Reg. 60939 (Nov. 29, 1994) (proposing to approve BAAQMD's title V program without California's Variance Law); 60 Fed. Reg. 32606 (June 23, 1995) (granting final interim approval to BAAQMD's title V program).

Petitioners argue that the "variance relief issued by BAAQMD under state law does not qualify as emergency breakdown relief authorized by the Title V provisions . . . ." Petition at 4. As with the Breakdown Relief Regulations, Petitioners' true concern appears to be that Condition I.H.2 and California's Variance Law are inconsistent with 40 CFR § 70.6(g), which allows for the incorporation of an affirmative defense provision into a federally approved title V program, and thus into title V permits. Condition I.H.2 and California's Variance Law, however, do not need to be consistent with 40 CFR § 70.6(g) because these provisions merely express an aspect of the District's discretionary enforcement authority under State law rather than incorporate a Part 70 affirmative defense provision into the Permit.[12] As described above, the discretionary

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[11] HSC section 42352(a) provides as follows:

No variance shall be granted unless the hearing board makes all of the following findings:

(1) That the petitioner for a variance is, or will be, inviolation of Section 41701 or of any rule, regulation, or order of the district.
(2) That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business. In making those findings where the petitioner is a public agency, the hearing board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this paragraph, "essential public service" means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.
(3) That the closing or taking would be without a corresponding benefit in reducing air contaminants.
(4) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.
(5) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.
(6) During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the district, and report these emission levels to the district pursuant to a schedule established by the district.

[12] Government agencies have discretion to not seek penalties or injunctive relief against a noncomplying source. California's Variance Law recognizes this inherent discretion by codifying the process by which a source may seek relief through the issuance of a variance. The ultimate decision to grant a variance, however, is still wholly discretionary, as evidenced by the findings the hearing board must make in order to issue a variance. See HSC section 42352(a)(1)-(6).

nature of California's Variance Law is evidenced by the findings set forth in HSC §42538(a) that a hearing board must make before it can issue a variance.[13] Inherent within the process of making these findings is the hearing board's ability to exercise its discretion to evaluate and consider the evidence and circumstances underlying the variance application and to reject or grant, as appropriate, that application. Moreover, the District clearly states in Condition I.H.3. that the granting by the District of a variance does not "provide relief from federal enforcement," which includes enforcement by both EPA and citizens.[14] As Condition I.H.2. refers to a discretionary authority under state law that does not affect the federal enforceability of any applicable requirement, I do not find its inclusion in the Los Medanos Permit objectionable.

Petitioners also argue that the "variance program is a creature of state law," and therefore should not be included in the Los Medanos Permit. Petitioners' complaint is obviously without merit since Part 70 clearly allows for inclusion of state- and local-only requirements in title V permits as long as they are adequately identified as having only state- or local-only significance. 40 CFR § 70.6(b)(2). For this reason, I find that Petitioners' allegation does not provide a basis to object to the Los Medanos Permit.

Petitioners further argue that California's Variance Law allows a revision to the approved SIP in violation of the Act. Petitioners misunderstand the provision. The SIP is comprised of the State or district rules and regulations approved by EPA as meeting CAA requirements. SIP requirements cannot be modified by an action of the State or District granting a temporary variance. EPA has long held the view that a variance does not change the underlying SIP requirements unless and until it is submitted to and approved by EPA for incorporation into the SIP. For example, since 1976, EPA's regulations have specifically stated: "In order for a variance to be considered for approval as a revision to the State implementation plan, the State must submit it in accordance with the requirements of this section." 40 CFR §51.104(d); 41 Fed. Reg. 18510, 18511 (May 5, 1976).

The fact that the California Variance Law does not allow a revision to the approved SIP is further evidenced by the law itself. By its very terms, California's Variance Law is limited in application to "any rule, regulation, or order of the district," HSC § 42352(a)(2) (emphasis supplied); therefore, the law clearly does not purport to modify the federally approved SIP. In addition, California's view of the law's effect is consistent with EPA's. For instance, guidance

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[13] Because of its discretionary nature, California's Variance Law does not impose a legal impediment to the District's ability to enforce its SIP or title V program. EPA cannot prohibit the District's use of the variance process as a means for sources to avoid enforcement of permit conditions by the District unless the misuse of the variance process results in the District's failure to adequately implement or enforce its title V program, or its other federally delegated or approved CAA programs. Petitioners have made no such allegation.

[14] Other BAAQMD information resources on variances also clearly set forth the legal significance of variances. For example, the application for a variance on BAAQMD's website states that EPA "does not recognize California's variance process" and that "EPA can independently pursue legal action based on federal law against the facility continuing to be in violation."

issued in 1989 by the California Air Resources Board ("CARB"), the State agency responsible for preparation of California's SIP, titled Variances and Other Hearing Board Orders as SIP Revisions or Delayed Compliance Orders Under Federal Law, demonstrates that the State's position with respect to the federal enforceability and legal consequences of variances is consistent with EPA's. For example, the guidance states:

> State law authorizes hearing boards of air pollution control districts to issue variances from district rules in appropriate instances. These variances insulate sources from the imposed state law. However, where the rule in question is part of the State Implementation Plan (SIP) as approved by the U.S. Environmental Protection Agency (EPA), the variance does not by itself insulate the source from penalties in actions brought by EPA to enforce the rule as part of the SIP. While EPA can use enforcement discretion to informally insulate sources from federal action, formal relief can only come through EPA approval of the local variance.

In 1993, the California Attorney General affirmed this position in a formal legal opinion submitted to EPA as part of the title V program approval process, stating that "any variance obtained by the source does not effect [sic] or modify permit terms or conditions . . . nor does it preclude federal enforcement of permanent terms and conditions." In sum, both the federal and State governments have long held the view that the issuance of a variance by a district hearing board does not modify the SIP in any way. For this reason, I find that Petitioners' allegation does not provide a basis to object to the Los Medanos Permit.

Finally, Petitioners raise concerns that the issuance of variances could "jeopardize attainment and maintenance of ambient air quality standards" and that inclusion of the variance provision in the Permit is highly confusing to the regulated community and public. As to the first concern, Petitioners' allegation is too speculative to provide a basis for an objection to a title V permit. Moreover, as previously stated, permittees that receive a variance remain subject to all SIP and federal requirements, as well as federal enforcement for violation of those requirements. As to Petitioners' final point, I find that including California's Variance Law in title V permits may actually help clarify the regulatory scheme to the regulated community and the public. California's Variance Law can be utilized by permittees seeking relief from District or State rules regardless of whether the Variance Law is referenced in title V permits; therefore, reference to the Variance Law with appropriate explanatory language as to its limited impact on federal enforceability helps clarify the actual nature of the law to the regulated community. In short, since title V permits are meant to contain all applicable federal, State, and local requirements, with appropriate clarifying language explaining the function and applicability of each requirement, the District may incorporate California's Variance Law into the Los Medanos Permit and other title V permits. For reasons stated in this Section, I do not find grounds to object to the Los Medanos Permit on this issue.

C. Statement of Basis

Petitioners' third claim is that the Los Medanos Permit lacks a statement of basis, as required by 40 CFR § 70.7(a)(5). Petition at 5. Petitioners assert that without a statement of basis it is virtually impossible for the public to evaluate the periodic monitoring requirements (or lack thereof). Id. They specifically identify the District's failure to include an explanation for its decision not to require certain monitoring, including the lack of any monitoring for opacity, filterable particulate, or PM limits. Petition at 6-7, n.2. Additionally, Petitioners contend that BAAQMD fails to include any SO_2 monitoring for source S-2 (Heat Recovery Steam Generator). Id.

Section 70.7(a)(5) of EPA's permit regulations states that "the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." The statement of basis is not part of the permit itself. It is a separate document which is to be sent to EPA and to interested persons upon request.[15] Id.

A statement of basis ought to contain a brief description of the origin or basis for each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from a straight recitation of requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring that is required under 40 C.F.R. 70.6(a)(3)(i)(B) or District Regulation 2-6-503. Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and EPA a record of the applicability and technical issues surrounding the issuance of the permit.[16] See e.g., In Re Port

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[15]Unlike permits, statements of basis are not enforceable, do not set limits and do not create obligations.

[16]EPA has provided guidance on the content of an adequate statement of basis in a letter dated December 20, 2001, from Region V to the State of Ohio and in a Notice of Deficiency ("NOD") issued to the State of Texas. <http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/sbguide.pdf> (Region V letter to Ohio); 67 Fed. Reg. 732 (January 7, 2002) (EPA NOD issued to Texas). These documents describe the following five key elements of a statement of basis: (1) a description of the facility; (2) a discussion of any operational flexibility that will be utilized at the facility; (3) the basis for applying the permit shield; (4) any federal regulatory applicability determinations; and (5) the rationale for the monitoring methods selected. Id. at 735. In addition, the Region V letter further recommends the inclusion of the following topical discussions in a statement of basis: (1) monitoring and operational restrictions requirements; (2) applicability and exemptions; (3) explanation of any conditions from previously issued permits that are not being transferred to the title V permit; (4) streamlining requirements; and (5) certain other factual information as necessary. In a letter dated February 19, 1999 to Mr. David Dixon, Chair of the CAPCOA Title V Subcommittee, the EPA Region IX Air Division provided guidance to California permitting authorities that should be considered when developing a statement of basis for purposes of EPA Region IX's review. This guidance is consistent with the other guidance cited above. Each of the various guidance documents, including the Texas NOD and the Region V and IX letters, provide generalized recommendations for developing an adequate statement of basis rather than "hard and fast" rules on what to include in any given statement of basis. Taken as a whole, these recommendations provide a good road map as to what should be included in a statement of basis considering, for example, the technical complexity of the permit, the history of the facility, and any new provisions, such as periodic monitoring conditions, that the permitting authority has drafted in conjunction with issuing the title

Hudson Operation Georgia Pacific, Petition No. 6-03-01, at pages 37-40 (May 9, 2003) ("Georgia Pacific"); In Re Doe Run Company Buick Mill and Mine, Petition No. VII-1999-001, at pages 24-25 (July 31, 2002) ("Doe Run"). Finally, in responding to a petition filed in regard to the Fort James Camas Mill title V permit, EPA interpreted 40 CFR § 70.7(a)(5) to require that the rationale for selected monitoring method be documented in the permit record. See In Re Fort James Camas Mill, Petition No. X-1999-1, at page 8 (December 22, 2000) ("Ft. James").

EPA's regulations state that the permitting authority must provide EPA with a statement of basis. 40 CFR § 70.7(a)(5). The failure of a permitting authority to meet this procedural requirement, however, does not necessarily demonstrate that the title V permit is substantively flawed. In reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, EPA considers whether the petitioner has demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. See CAA § 505(b)(2) (objection required "if the petitioner demonstrates . . . that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]"); see also, 40 CFR § 70.8(c)(1). Thus, where the record as a whole supports the terms and conditions of the permit, flaws in the statement of basis generally will not result in an objection. See e.g., Doe Run at 24-25. In contrast, where flaws in the statement of basis resulted in, or may have resulted in, deficiencies in the title V permit, EPA will object to the issuance of the permit. See e.g., Ft. James at 8; Georgia Pacific at 37-40.

In this case, as discussed below, the permitting authority's failure to adequately explain its permitting decisions either in the statement of basis or elsewhere in the permit record is such a serious flaw that the adequacy of the permit itself is in question. By reopening the permit, the permitting authority is ensuring compliance with the fundamental title V procedural requirements of adequate public notice and comment required by sections 502(b)(6) and 503(e) of the Clean Air Act and 40 CFR § 70.7(h), as well as ensuring that the rationale for the selected monitoring method, or lack of monitoring, is clearly explained and documented in the permit record. See 40 CFR §§ 70.7(a)(5) and 70.8(c); Ft. James at 8.

For the proposed Los Medanos Permit, the District did not provide EPA with a separate statement of basis document. In a meeting with EPA representatives held on October 31, 2001, at the Region 9 offices, the District claimed that it complied with the statement of basis requirements for the Los Medanos Permit because it incorporated all of the necessary explanatory information either directly into the Permit or it included such information in other supporting documentation.[17] As such, the District argues, at a minimum, it complied with the substantive requirements of a statement of basis.

V permit.

[17] This meeting along with the others held with the District were for fact-gathering purposes only. In a November 8, 2001 meeting at the Region 9 offices, the Petitioners were likewise provided the opportunity to present facts pertaining to the Petition to EPA representatives.

In responding to the Petition, we reviewed the final Los Medanos Permit and all supporting documentation, which included the proposed Permit, the FDOC drafted by the District for purposes of licensing the power plant with the CEC, and the "Permit Evaluation and Emission Calculations" ("Permit Evaluation") which was developed in March 2001 as part of the modification to the previously issued ATC permit. Although the District provided some explanation in this supporting documentation as to the factual and legal basis for certain terms and conditions of the Permit, this documentation did not sufficiently set forth the basis or rationale for many other terms and conditions. Generally speaking, the District's record for the Permit does not adequately support: (1) the factual basis for certain standard title V conditions; (2) applicability determinations for source-specific applicable requirements, such as the Acid Rain requirements and New Source Performance Standards ("NSPS"); (3) exclusion of certain NSR and PSD conditions contained in underlying ATC permits; (4) recordkeeping decisions and periodic monitoring decisions under 70.6(a)(3)(i)(B) and District Regulation 2-6-503; and (5) streamlining analyses, including a discussion of permit shields.

EPA Region 9 identified numerous specific deficiencies falling under each of these broad categories.[18] For example, the District's permit record does not adequately support the basis for certain source-specific applicable requirements identified in Section IV of the Permit, especially those regarding the applicability or non-applicability of subsections rules that apply to particular types of units such the as NSPS for combustion turbines or SIP-approved District Regulations. For instance, in table IV-B and D of the Permit, the District indicates that subsection 303 of District Regulation 9-3, which sets forth NOx emission limitations, applies to certain emission units. However, the permit record fails to describe why subsection 601 of the same District Regulation, an otherwise seemingly applicable provision, is not included in the tables as an applicable requirement. Subsection 601 establishes how exhaust gases should be sampled and analyzed to determine NOx concentrations for purposes of compliance with subsection 303. Similarly, in the same tables, the District lists certain applicable NSPS subsections, such as those in 40 CFR Part 60 Subparts Da and GG, but does not explain why these subsections apply to those specific emission units nor why other seemingly applicable subsections of the same NSPS regulations do not apply to those units.[19]

The permit record also fails to explain the District's streamlining decisions of certain

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[18] EPA Region 9 Permits Office described these areas of concern in greater detail in a memorandum dated March 29, 2002, "Region 9 Review of Statement of Basis for Los Medanos title V Permit in Response to Petition to Object." This memorandum is part of the administrative record for this Order and was reviewed in responding to this Petition.

[19] The tables in Section IV pertaining to certain gas turbines located at the Facility cite to 40 CFR 60.332(a)(1) as an applicable requirement. However, these same tables fail to cite to subsections 40 CFR 60.332(a)(2) through 60.332(l) of the same NSPS program even though these provisions also apply to gas turbines. The District's failure to provide any sort of discussion or explanation as to the applicability or non-applicability of the subsections of 40 CFR 60.332 makes it impossible to review the District's applicability determinations for this NSPS.

underlying ATC permit conditions as set forth in Section VI of the Permit. The District apparently modified or streamlined the ATC conditions in the context of the title V permitting process but failed to provide an explanation in the permit record as to the basis for the change to the conditions. For instance, Condition 53 of Section VI states that the condition was "[d]eleted [on] August, 2001," but the District fails to discuss or explain anywhere in the permit record the basis for this deletion or the nature of the original condition that was deleted.

As a final example of the District's failure to provide a basis or rationale for permit terms, in accordance with Petitioner's claim, the permit record is devoid of discussion pertaining to how or why the selected monitoring is sufficient to assure compliance with the applicable requirements. See 69 Fed. Reg. 3202, 3207 (Jan. 22, 2004). Most importantly, for those applicable requirements which do not otherwise have monitoring requirements, the Permit fails to require monitoring pursuant to 40 C.F.R. 70.6(a)(3)(i)(B), and the permit record fails to discuss or explain why no monitoring should be required under this provision. As evidenced by these specific examples, I find the District did not provide an adequate analysis or discussion of the terms and conditions of the proposed Los Medanos Permit.

To conclude, by failing to draft a separate statement of basis document and by failing to include appropriate discussion in the Permit or other supporting documentation, the District has failed to provide an adequate explanation or rationale for many significant elements of the Permit. As such, I find that the Petitioners' claim in regard to this issue is well founded, and by this Order, I am requiring the District to reopen the Los Medanos Permit, and make available to the public an adequate statement of basis that provides the public and EPA an opportunity to comment on the title V permit and its terms and conditions as to the issues identified above.

D. Inadequate Permit Conditions

Petitioners' fourth claim is that Condition 22 in the Los Medanos Permit is unenforceable. The Petitioners claim that this condition "appears to defer the development of a number of permit conditions related to transient, non-steady state conditions to a time after approval of the Title V permit." Petition at 7. The Petitioners recommend that "a reasonable set of conditions should be defined" and amended through the permit modification process to conform to new data in the future. I disagree with the Petitioners on this issue.

As Petitioners correctly note, Part 70 and the Act require that "conditions in a Title V permit. . . be enforceable." However, they argue that "Condition 22 is presently unenforceable and must be deleted from the permit." I find that the condition challenged by the Petitioners is enforceable.

Conditions 21 and 22 establish NOx emissions levels for units P-1 and P-2, including limits for transient, non-steady state conditions. Condition 22(f) requires the permittee to gather data and draft and submit an operation and maintenance plan to control transient, non-steady

state emissions for units P-1 and P-2[20] within 15 months of issuance of the permit. Condition 22(g) creates a process for the District, after consideration of continuous monitoring and source test data, to fine-tune on a semi-annual basis the NO_X emission limit for units P-1 and P-2 during transient, non-steady state conditions and to modify data collection and recordkeeping requirements for the permittee.

These requirements are enforceable. EPA and the District can enforce both Condition 22(f)'s requirement to draft and submit an operation and maintenance plan for agency approval and the control measures adopted under the plan after approval. For Condition 22(g), the process for the District to modify emission limits and/or data collection and recordkeeping requirements is clearly set forth in the Permit and the modified terms will be federally enforceable. Moreover, the circumstances that trigger application of Condition 22 are specifically defined since Condition 22(c) precisely defines "transient, non-steady state condition" as when "one or more equipment design features is unable to support rapid changes in operation and respond to and adjust all operating parameters required to maintain the steady-state NO_X emission limit specified in Condition 21(b)." As such, I find that Condition 22 is federally and practically enforceable. Therefore, Petitioners' claim on this count is not supported by the plain language of the Permit itself.

Moreover, to the extent that Petitioners are concerned that Lowest Achievable Emission Rate ("LAER")[21] emission standards are being set through a process that does not incorporate appropriate NSR, PSD, and title V public notice and comment processes, such concerns are not well-founded. By its very terms, the Permit prohibits relaxation of the LAER emissions standards set in the permitting process. Condition 21(b) of the Permit sets a LAER-level emission standard of 2.5 ppmv NOx, averaged over any 1-hour period, for units P-1 and P-2 for all operational conditions other than transient, non-steady state conditions. Condition 22(a) sets the limit for transient, non-steady state conditions of 2.5 ppmv NOx, averaged over any rolling 3-hour period.[22] Implementation of Condition 22 cannot relax the LAER-level emission limits. Condition 22(f) merely requires further data-collecting, planning, and implementation of control

[20]Unit P-1 is defined as "the combined exhaust point for the S-1 Gas Turbine and the S-2 HRSG after control by the A-1 SCR System and A-2 Oxidation Catalyst" and unit P-2 is defined as "the combined exhaust point for the S-3 Gas Turbine and the S-4 HRSG after control by the A-3 SCR System and A-4 Oxidation Catalyst." Permit, Condition 21(a).

[21]LAER is the level of emission control required for all new and modified major sources subject to the NSR requirements of Section 173, Part D, of the CAA for non-attainment areas. 42 U.S.C. § 7501-15. Since the Bay Area is non-attainment for ozone, the Facility must meet LAER-level emission controls for NO_x emission since NO_x is a pre-cursor of ozone. California uses different terminology than the CAA when applying LAER, however. In California, best available control technology ("BACT") is consistent with LAER-level controls, and California and its local permitting authorities use this terminology when issuing permits.

[22]The District determined this limit to be LAER for transient, non-steady state conditions because, as the District stated in its Response to Comments, "the NOx emission limit (2.5 ppmv averaged over one hour) during load changes . . . . ha[s] not yet been achieved in practice by any utility-scale power plant."

measures for transient, non-steady state emissions that go beyond those already established to comply with LAER requirements. While Condition 22(g) does allow the District to modify the emission limit during transient, non-steady state conditions,[23] this new limit cannot exceed the "backstop" LAER-level limit set by Condition 22(a). As such, Condition 22(g) serves to only make overall emission limits more stringent. The District itself recognized the "no backsliding" nature of Conditions 22(f) and (g) on page 3 of its Response to Comments where it stated that the Facility "must comply with 'backstop' NO_X emission limit of 2.5 ppmv, averaged over 3 hours, under all circumstances and comply with all hourly, daily and annual mass NO_X emission limits."[24]

Finally, for any control measures; further data collection, recordkeeping or monitoring requirements; new definitions; or emission limits established pursuant to Conditions 22(f) or (g) that are to be incorporated into the permit, the District must utilize the appropriate title V permit modification procedures set forth in 40 CFR § 70.7(d) and the District's Regulation 2-6-415 to modify the Permit. The District itself recognizes this in Condition 22(g) by stating that "the Title V operating permit shall be amended as necessary to reflect the data collection and recordkeeping requirements established under 22(g)(ii)." For the reasons described above, we do not find Conditions 22(f) and (g) unenforceable or otherwise objectionable for inclusion in the Los Medanos Permit.

E. Failure to Incorporate Agreed-to Changes

The final claim by the Petitioners is that the District agreed to incorporate certain changes into the final Los Medanos Permit but failed to do so. Namely, Petitioners claim that the District failed to keep its commitments to OCE to add language requiring recordkeeping for stipulated abatement strategies under SIP-approved Regulation 4 and to add clarifying language about NO_X monitoring requirements. The District appeared to make these commitments in its Response to Comment Letter. These allegations do not provide a basis for objecting to the Permit because neither change is necessary to ensure that the District is properly including all applicable requirements in the permit nor are they necessary to assure compliance with the underlying applicable requirements. CAA § 504(a); 40 CFR § 70.6(a)(3).

The first change sought by OCE during the comment period was a requirement that the

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[23]The District may modify the emission limit during transient, non-steady state conditions every 6 months for the first 24 months after the start of the Commissioning period. The Commissioning period commences "when all mechanical, electrical, and control systems are installed and individual system start-up has been completed, or when a gas turbine is first fired, whichever comes first. . . ." The Commissioning period terminates "when the plant has completed performance testing, is available for commercial operation, and has initiated sales to the power exchange." Permit, at page 34.

[24]The purpose of Condition 22, as stated by the District, is to allow for limited "excursions above the emission limit that could potentially occur under unforeseen circumstances beyond [the Facility's] control." This is the rationale for the three hour averaging period for transient, non-steady state conditions rather than the one hour averaging period of Condition 21(b) for all other periods.

Facility document response actions taken during periods of heightened air pollution. The District's Regulation 4 establishes control and advisory procedures for large air emission sources when specified levels of ambient air contamination have been reached and prescribes certain abatement actions to be implemented by each air source when action alert levels of air pollution are reached. OCE recommended that the District require recordkeeping in the title V permit to "insure that the stipulated abatement strategies [of Regulation 4] are implemented during air pollution events," and the District appeared to agree to such a recommendation in its Response to Comments. Although the recordkeeping suggested by Petitioners would be helpful, Petitioners have not shown that it is required by title V, the SIP, or any federal regulation, and therefore, this failure to include it is not a basis for objecting to the permit.

The Part 70 regulations set the minimum standard for inclusion of monitoring and recordkeeping requirements in title V permits. See 40 CFR § 70.6(a)(3). These provisions require that each permit contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit" where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring). 40 CFR § 70.6(a)(3)(i)(B). There may be limited cases in which the establishment of a regular program of monitoring and/or recordkeeping would not significantly enhance the ability of the permit to reasonably assure compliance with the applicable requirement and where the status quo (i.e., no monitoring or recordkeeping) could meet the requirements of 40 CFR § 70.6(a)(3). Such is the case here.

Air pollution alert events occur infrequently, and therefore, compliance with Regulation 4 is a minimal part of the source's overall compliance with SIP requirements. More importantly, Regulation 4-303 abatement requirements mostly impose a ban on direct burning or incineration during air pollution alert events, activities which are unlikely to occur at a gas-fired power plant such as the Facility and in any case are easy to monitor by District inspectors. The other Regulation 4-303 requirements are mostly voluntary actions to be taken by the sources, such as reduction in use of motor vehicles, and therefore do not require compliance monitoring or recordkeeping to assure compliance. Since the activities regulated by Regulation 4 are unlikely to occur at the Facility, and compliance is easily verified by District inspectors, recordkeeping is not necessary to assure compliance with Regulation 4. Therefore, further recordkeeping requirements sought by the Petitioners are not required by 40 CFR § 70.6(a)(3).

The second change sought by the Petitioners is to add language to Condition 36 clarifying why certain pollutants, such as NO_X emissions, are exempt from mass emission calculations. On page 3 of the District's Response to Comments, the District explained that the NO_X emissions are exempt from the mass emission calculations because they are measured directly through CEMS monitoring, whereas the other pollutant emissions subject to the calculations do not have equivalent CEMS monitoring. Though this clarification is helpful, it does not need to be incorporated into the title V permit itself. Therefore, its non-inclusion in the Permit does not provide a basis for an EPA objection to the Permit. To the extent that such

clarifying language is important, it should be included in the statement of basis, however. Since the District will be drafting a statement of basis for the Los Medanos Permit due to the partial granting of the Petition, we recommend that the clarifying language for Condition 36 be included in the newly drafted statement of basis.

Though we hope that permitting authorities would generally fulfill commitments made to the public, we find that the Petitioners' fifth claim does not provide a basis for an objection to the Los Medanos Permit for the reasons described above. The mere fact that the District committed to make certain changes, yet did not follow through on those commitments, does not provide a basis for an objection to a title V permit. Petitioners have provided no other reason why the agreed upon changes must be made to the permit beyond the District's commitments. I accordingly deny Petitioners' request to veto the permit on these grounds.

IV. CONCLUSION

For the reasons set forth above and pursuant to Section 505(b)(2) of the Clean Air Act, I am granting the Petitioners' request that the Administrator object to the issuance of the Los Medanos Permit with respect to the statement of basis issue and am denying the Petition with respect to the other allegations.

May 24, 2004
Date

_________/S/___________
Michael O. Leavitt
Administrator

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of Valero Refining Co Benicia, California Facility	Petition No. IX-2004-07
Major Facility Review Permit Facility No. B2626 Issued by the Bay Area Air Quality Management District	ORDER RESPONDING TO PETITIONER'S REQUEST THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF A STATE OPERATING PERMIT

ORDER DENYING IN PART AND GRANTING IN PART A PETITION FOR OBJECTION TO PERMIT

On December 7, 2004, the Environmental Protection Agency ("EPA") received a petition ("Petition") from Our Children's Earth Foundation ("OCE" or "Petitioner") requesting that the EPA Administrator object to the issuance of a state operating permit from the Bay Area Air Quality Management District ("BAAQMD" or "District") to Valero Refining Co. to operate its petroleum refinery located in Benicia, California ("Permit"), pursuant to title V of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7661-7661f, CAA §§ 501-507, EPA's implementing regulations in 40 C.F.R. Part 70 ("Part 70"), and the District's approved Part 70 program. *See* 66 Fed. Reg. 63503 (Dec. 7, 2001).

Petitioner requested EPA object to the Permit on several grounds. In particular, Petitioner alleged that the Permit failed to properly require compliance with applicable requirements pertaining to, *inter alia*, flares, cooling towers, process units, electrostatic precipitators, and other waste streams and units. Petitioner identified several alleged flaws in the Permit application and issuance, including a deficient Statement of Basis. Finally, Petitioners alleged that the permit impermissibly lacked a compliance schedule and failed to include monitoring for several applicable requirements.

EPA has now fully reviewed the Petitioner's allegations pursuant to the standard set forth in section 505(b)(2) of the Act, which places the burden on the petitioner to "demonstrate[] to the Administrator that the permit is not in compliance" with the applicable requirements of the Act or the requirements of part 70, *see also* 40 C.F.R. § 70.8(c)(1), and I hereby respond to them by this Order. In considering the allegations, EPA reviewed the Permit and related materials and information provided by the Petitioner in the Petition.[1] Based on this review, I partially deny and

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[1]On March 7, 2005 EPA received a lengthy (over 250 pages, including appendices), detailed submission from Valero Refining Company regarding this Petition. Due to the fact that Valero Refining Company made its submission very shortly before EPA's settlement agreement deadline for responding to the Petition and the size of the

partially grant the Petitioner's request that I object to issuance of the Permit for the reasons described below.

I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of title V. In 1995, EPA granted interim approval to the title V operating permit program submitted by BAAQMD. 60 Fed. Reg. 32606 (June 23, 1995); 40 C.F.R. Part 70, Appendix A. Effective November 30, 2001, EPA granted full approval to BAAQMD's title V operating permit program. 66 Fed. Reg. 63503 (Dec. 7, 2001.).

Major stationary sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes applicable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. *See* CAA §§ 502(a) and 504(a). The title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as "applicable requirements"), but does require permits to contain monitoring, recordkeeping, reporting, and other compliance requirements when not adequately required by existing applicable requirements to assure compliance by sources with existing applicable emission control requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, EPA, permitting authorities, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements. Thus, the title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under section 505(a) of the Act and 40 C.F.R. § 70.8(a), permitting authorities are required to submit all operating permits proposed pursuant to title V to EPA for review. If EPA determines that a permit is not in compliance with applicable requirements or the requirements of 40 C.F.R. Part 70, EPA will object to the permit. If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act and 40 C.F.R. § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. Section 505(b)(2) of the Act requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of Part 70 and the applicable implementation plan. *See*, 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003). Part 70 requires that a petition must be "based only on objections to the

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submission, EPA was not able to review the submission itself, nor was it able to provide the Petitioner an opportunity to respond to the submission. Although the Agency previously has considered submissions from permittees in some instances where EPA was able to fully review the submission and provide the petitioners with a chance to review and respond to the submissions, time did not allow for either condition here. Therefore, EPA did not consider Valero Refining Company's submission when responding to the Petition via this Order.

permit that were raised with reasonable specificity during the public comment period. . ., unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period." 40 C.F.R. § 70.8(d). A petition for objection does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period and before receipt of an objection. If EPA objects to a permit in response to a petition and the permit has been issued, the permitting authority or EPA will modify, terminate, or revoke and reissue such a permit using the procedures in 40 C.F.R. §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

II. PROCEDURAL BACKGROUND

A Permitting Chronology

BAAQMD held its first public comment period for the Valero permit, as well as BAAQMD's other title V refinery permits from June through September 2002.[2] BAAQMD held a public hearing regarding the refinery permits on July 29, 2002. From August 5 to September 22, 2003, BAAQMD held a second public comment period for the permits. EPA's 45-day review of BAAQMD's initial proposed permits ran concurrently with this second public comment period, from August 13 to September 26, 2003. EPA did not object to any of the proposed permits under CAA section 505(b)(1). The deadline for submitting CAA section 505(b)(2) petitions was November 25, 2003. EPA received petitions regarding the Valero Permit from Valero Refining Company and from Our Children's Earth Foundation. EPA also received section 505(b)(2) petitions regarding three of BAAQMD's other refinery permits.

On December 1, 2003, BAAQMD issued its initial title V permits for the Bay Area refineries, including the Valero facility. On December 12, 2003, EPA informed the District of EPA's finding that cause existed to reopen the refinery permits because the District had not submitted proposed permits to EPA as required by title V, Part 70 and BAAQMD's approved title V program. *See* Letter from Deborah Jordan, Director, Air Division, EPA Region 9 to Jack Broadbent, Air Pollution Control Officer, Bay Area Air Quality Management District, dated December 12, 2003. EPA's finding was based on the fact that the District had substantially revised the permits in response to public comments without re-submitting proposed permits to EPA for another 45-day review. As a result of the reopening, EPA required BAAQMD to submit to EPA new proposed permits allowing EPA an additional 45-day review period and an opportunity to object to a permit if it failed to meet the standards set forth in section 505(b)(1).

On December 19, 2003, EPA dismissed all of the section 505(b)(2) petitions seeking objections to the refinery permits as unripe because of the just-initiated reopening process. *See e.g.*, Letters from Deborah Jordan, Director, Air Division, EPA Region 9, to John T. Hansen,

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[2]There are a total of five petroleum refineries in the Bay Area: Chevron Products Company's Richmond refinery, ConocoPhillips Company's San Francisco Refinery in Rodeo, Shell Oil Company's Martinez Refinery, Tesoro Refining and Marketing Company's Martinez refinery, and Valero Refining Company's Benicia facility.

Pillsbury Winthrop, LLP (representing Valero) and to Marcelin E. Keever, Environmental Law and Justice Clinic, Golden Gate University School of Law (representing Our Children's Earth Foundation and other groups) dated December 19, 2003. EPA also stated that the reopening process would allow the public an opportunity to submit new section 505(b)(2) petitions after the reopening was completed. In February 2004, three groups filed challenges in the United States Court of Appeals for the Ninth Circuit regarding EPA's dismissal of their section 505(b)(2) petitions. The parties resolved this litigation by a settlement agreement under which EPA agreed to respond to new petitions (i.e., those submitted after EPA's receipt of BAAQMD's re-proposed permits, such as this Petition) from the litigants by March 15, 2005. *See* 69 Fed. Reg. 46536 (Aug. 3, 2004).

BAAQMD submitted a new proposed permit for Valero to EPA on August 26, 2004; EPA's 45-day review period ended on October 10, 2004. EPA objected to the Valero Permit under CAA section 505(b)(1) on one issue: the District's failure to require adequate monitoring, or a design review, of thermal oxidizers subject to EPA's New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.

B. Timeliness of Petition

The deadline for filing section 505(b)(2) petitions expired on December 9, 2004. EPA finds that the Petition was submitted on December 7, 2004, which is within the 60-day time frame established by the Act and Part 70. EPA therefore finds that the Petition is timely.

III. ISSUES RAISED BY PETITIONER

A. Compliance with Applicable Requirements

Petitioner alleges that EPA must object to the Permit on the basis of alleged deficiencies Petitioner claims EPA identified in correspondence with the District dated July 28, August 2, and October 8, 2004. Petitioner alleges that EPA and BAAQMD engaged in a procedure that allowed issuance of a deficient Permit. Petition at 6-10. EPA disagrees with Petitioner that it was required to object to the Permit under section 505(b)(1) or that it followed an inappropriate procedure during its 45-day review period.

As a threshold matter, EPA notes that Petitioner's claims addressed in this section are limited to a mere paraphrasing of comments EPA provided to the District in the above-referenced correspondence. Petitioner did not include in the Petition any additional facts or legal analysis to support its claims that EPA should object to the Permit. Section 505(b)(2) of the Act places the burden on the petitioner to "demonstrate[] to the Administrator that the permit is not in compliance" with the applicable requirements of the Act or the requirements of part 70. *See also* 40 C.F.R. § 70.8(c)(1); *NYPIRG*, 321 F.3d at 333 n.11. Furthermore, in reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, EPA considers whether the petitioner has

demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. *See* CAA § 505(b)(2); *see also* 40 C.F.R. § 70.8(c)(1); *In the Matter of Los Medanos Energy Center*, at 11 (May 24, 2004) ("*Los Medanos*"); *In the Matter of Doe Run Company Buick Mill and Mine*, Petition No. VII-1999-001, at 24-25 (July 31, 2002) ("*Doe Run*"). Petitioner bears the burden of demonstrating a deficiency in the permit whether the alleged flaw was first identified by Petitioner or by EPA. *See* 42 U.S.C. § 7661d(b)(2). Because this section of the Petition is little more than a summary of EPA's comments on the Permit, with no additional information or analysis, it does not demonstrate that there is a deficiency in the Permit.

1. EPA's July 28 and August 2, 2004 Correspondence

Petitioner overstates the legal significance of EPA's correspondence to the District dated July 28 and August 2, 2004. This correspondence, which took place between EPA and the District during the permitting process but before BAAQMD submitted the proposed Permit to EPA for review, was clearly identified as "issues for discussion" and did not have any formal or legal effect. Nonetheless, EPA is addressing the substantive aspects of Petitioner's allegation regarding the applicability and enforceability of provisions relating to 40 C.F.R. § 60.104(a)(1) in Section III.G.1.

2 Attachment 2 of EPA's October 8, 2004 Letter

EPA's letter to the District dated October 8, 2004 contained the Agency's formal position with respect to the proposed Permit. *See* Letter from Deborah Jordan, Director, Air Division, EPA Region 9 to Jack Broadbent, Air Pollution Control Officer, BAAQMD, dated October 8, 2004 ("EPA October 8, 2004 Letter"). Attachment 2 of the letter requested the District to review whether the following regulations and requirements were appropriately handled in the Permit:

- Applicability of 40 C.F.R. Part 63, Subpart CC to flares
- Applicability of Regulation 8-2 to cooling towers
- Applicability of NSPS Subpart QQQ to new process units
- Applicability of NESHAP Subpart FF to benzene waste streams according to annual average water content
- Compliance with NESHAP Subpart FF for benzene waste streams
- Parametric monitoring for electrostatic precipitators

EPA and the District agreed that this review would be completed by February 15, 2005 and that the District would solicit public comment for any necessary changes by April 15, 2005. Contrary to Petitioner's allegation, EPA's approach to addressing these uncertainties was appropriate. The Agency pressed the District to re-analyze these issues and obtained the District's agreement to follow a schedule to bring these issues to closure. EPA notes again that the Petition itself provides no additional factual or legal analysis that would resolve these applicability issues and demonstrate that the Permit is indeed lacking an applicable requirement

Progress in resolving these issues is attributable solely to the mechanism set in place by EPA and the District.

EPA has received the results of BAAQMD's review, *see,* Letter from Jack Broadbent, Air Pollution Control Officer, BAAQMD, to Deborah Jordan, Director, Air Division, EPA Region 9, dated February 15, 2005 ("BAAQMD February 15, 2005 Letter"), and is making the following findings.

a. Applicability of 40 C.F.R. Part 63, Subpart CC to Flares

This issue is addressed in Section III.H

b. Cooling Tower Monitoring

This issue is addressed at Section III.G.3

Applicability of NSPS Subpart QQQ to New Process Units

Petitioner claims EPA determined that the Statement of Basis failed to discuss the applicability of NSPS Subpart QQQ for two new process units at the facility.

In an applicability determination for Valero's sewer collection system (S-161), the District made a general reference to two new process units that had been constructed since 1987, the date after which constructed, modified, or reconstructed sources became subject to New Source Performance Standard ("NSPS") Subpart QQQ. The District further indicated that process wastewater from these units is hard-piped to an enclosed system. However, the District did not discuss the applicability of Subpart QQQ for these units or the associated piping. As a result, it was not clear whether applicable requirements were omitted from the proposed Permit.

In response to EPA's request for more information on this matter, the District stated in a letter dated February 15, 2005[3] that the process units are each served by separate storm water and sewer systems. The District has concluded that the storm water system is exempt from Subpart QQQ pursuant to 40 C.F.R. 60.692-1(d)(1). However, with regard to the sewer system, the District stated the following:

> The second sewer system is the process drain system that contains oily water waste streams. This system is "hard-piped" to the slop oil system where the wastewater is separated and sent to the sour water stripper. From the sour water stripper, the wastewater [is] sent directly to secondary treatment in the WWTP where it is processed in the Biox units.

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[3] *See* Letter from Jack Broadbent, Executive Office/APCO, Bay Area Air Quality Management District to Deborah Jordan, Director, Air Division, EPA Region 9.

The District will review the details of the new process drain system and determine the applicable standards. A preliminary review indicates that, since this system is hard-piped with no emissions, the new process drain system may have been included in the slop oil system, specifically S-81 and/or S104. If this is the case, Table IV-J33 will be reviewed and updated, as necessary, to include the requirements of the new process drain system.

The District's response indicates that the Permit may be deficient because it may lack applicable requirements. Therefore, EPA is granting Petitioner's request to object to the Permit. The District must determine what requirements apply to the new process drain system and add any applicable requirements to the Permit as appropriate.

d. Management of Non-aqueous Benzene Waste Streams Pursuant to 40 C.F.R. Part 61, Subpart FF

Petitioner claims that EPA identified an incorrect applicability determination regarding benzene waste streams and NESHAP Subpart FF. Referencing previous EPA comments, Petitioner notes that the restriction contained in 40 C.F.R. § 61.342(e)(1) was ignored by the District in the applicability determination it conducted for the facility.

The Statement of Basis for the proposed Permit included an applicability determination for Valero's Sewer Pipeline and Process Drains, which stated the following:

> Valero complies with FF through 61.342(e)(2)(i), which allows the facility 6 Mg/yr of uncontrolled benzene waste. Thus, facilities are allowed to choose whether the benzene waste streams are controlled or uncontrolled as long as the uncontrolled stream quantities total less than 6 Mg/yr...Because the sewer and process drains are uncontrolled, they are not subject to 61.346, the standards for individual drain systems.

In its October 8, 2004 letter, EPA raised concerns over this applicability determination due to the District's failure to discuss the control requirements in 40 C.F.R. § 61.342(e)(1). Under the chosen compliance option, only wastes that have an average water content of 10% or greater may go uncontrolled (*see* 40 C.F.R. § 61.342(e)(2)) and it was not clear from the applicability determination that the emission sources met this requirement. In response to EPA's request for more information on this matter, the BAAQMD stated in its February 15, 2005 letter, "In the Revision 2 process, the District will determine which waste streams at the refineries are non-aqueous benzene waste streams. Section 61.342(e)(1) will be added to the source-specific tables for any source handling such waste. The District has sent letters to the refineries requesting the necessary information."

The District's response indicates that the Permit may be deficient because it may lack an applicable requirement, specifically Section 61.342(e)(1). Therefore, EPA is granting Petitioner's request to object to the Permit. The District must reopen the Permit to add Section

61.342(e)(1) to the source-specific tables for all sources that handle non-aqueous benzene waste streams or explain in the Statement of Basis why Section 61.342(e)(1) does not apply.

e. 40 C.F.R. Part 61, Subpart FF - 6BQ Compliance Option

Referencing EPA's October 8, 2004 letter, Petitioner claims that EPA identified an incorrect applicability determination regarding the 6BQ compliance option for benzene waste streams under 40 C.F.R. § 61.342(e). Petitioner claims that this should have resulted in an objection by EPA.

The EPA comment referenced by Petitioner is issue #12 in Attachment 2 of the Agency's October 8, 2004 letter to the BAAQMD. In that portion of its letter, EPA identified incorrect statements regarding the wastes that are subject to the 6 Mg/yr limit under 40 C.F.R. § 61.342(e)(2)(i). Specifically, the District stated that facilities are allowed to choose whether the benzene waste streams are controlled or uncontrolled as long as the uncontrolled stream quantities total less than 6 Mg/yr. In actuality, the 6 Mg/yr limit applies to all aqueous benzene wastes (both controlled and uncontrolled).

The fundamental issues raised by the EPA October 8, 2004 Letter were 1) whether or not the refineries are in compliance with the requirements of the benzene waste operations NESHAP, and 2) the need to remove the incorrect language from the Statement of Basis. The first issue is a matter of enforcement and does not necessarily reflect a flaw in the Permit. Absent information indicating that the refinery is actually out of compliance with the NESHAP, there is no basis for an objection by EPA. The second issue has already been corrected by the District. In response to EPA's comment, the District revised the Statement of Basis to state that the 6 Mg/yr limit applies to the benzene quantity in the total aqueous waste stream. *See* December 16, 2004 Statement of Basis at 26. Therefore, EPA is denying Petitioner's request to object to the Permit. However, in responding to this Petition, EPA identified additional incorrect language in the Permit. Specifically, Table VII-Refinery states, "Uncontrolled benzene <6 megagrams/year." *See* Permit at 476. As discussed above, this is clearly inconsistent with 40 C.F.R. § 61.342(e)(2). In addition, Table IV-Refinery contains a similar entry that states, "Standards: General; [Uncontrolled] 61.342(e)(2) Waste shall not contain more than 6.0 Mg/yr benzene." *See* Permit at 51. As a result, under a separate process, EPA is reopening the Permit pursuant to its authority under 40 C.F.R. § 70.7(g) to require that the District fix this incorrect language.

f. Parametric Monitoring for Electrostatic Precipitators

Petitioner claims EPA found that the Permit contains deficient particulate monitoring for sources that are abated by electrostatic precipitators (ESPs) and that are subject to limits under SIP-approved District Regulations 6-310 and 6-311. Petitioner requests that EPA object to the Permit to require appropriate monitoring.

BAAQMD Regulation 6-310 limits particulate matter emissions to 0.15 grains per dry

standard cubic foot, and Regulation 6-311 contains a variable limit based on a source's process weight rate. Because Regulation 6 does not contain monitoring provisions, the District relied on its periodic monitoring authority to impose monitoring requirements on sources S-5, S-6, and S-10 to ensure compliance with these standards. See 40 C.F.R. § 70.6(a)(3)(i)(B); BAAQMD Reg. 6-503; BAAQMD Manual of Procedures, Vol. III, Section 4.6. For sources S-5 and S-6, the Permit requires annual source tests for both emission limits. For S-10, the Permit requires an annual source test to demonstrate compliance with Regulation 6-310 but no monitoring is required for Regulation 6-311.

With regard to monitoring for Regulation 6-311 for source S-10, the Permit is inconsistent with the Statement of Basis. The final Statement of Basis indicates that Condition 19466, Part 9 should read, "The Permit Holder shall perform an annual source test on Sources S-5, S-6, S-8, S-10, S-11, S-12, S-176, S-232, S-233 and S-237 to demonstrate compliance with Regulation 6-311 (PM mass emissions rate not to exceed 4.10P0.67 lb/hr)." *See* December 16, 2004 Statement of Basis at 84. However, Part 9 of Condition 19466 in the Permit states that the monitoring requirement only applies to S-5 and S-6. December 16, 2004 Permit at 464. In addition, Table VII-B1 states that monitoring is not required. Therefore, EPA is granting Petitioner's request to object to the Permit as it pertains to monitoring S-10 for compliance with Regulation 6-311. The District must reopen the Permit to add monitoring requirements adequate to assure compliance with the emission limit or explain in the Statement of Basis why it is not needed.

Regarding the annual source tests for sources S-5, S-6, and S-10, EPA believes that an annual testing requirement is inadequate in the absence of additional parametric monitoring because proper operation and maintenance of the ESPs is necessary in order to achieve compliance with the emission limits. In the BAAQMD February 15, 2005 Letter, the District stated that it intends to "propose a permit condition requiring the operator to conduct an initial compliance demonstration that will establish a correlation between opacity and particulate emissions." Thus, EPA concludes the Permit does not meet the Part 70 standard that it contain periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance. *See* 40 C.F.R. § 70.6(a)(3)(i)(B). Therefore, EPA is granting Petitioner's request to object to the Permit. At a minimum, the Permit must contain monitoring which yields data that are representative of the source's compliance with its permit terms and conditions.

3. Attachment 3 of EPA's October 8, 2004 Letter

Attachment 3 of EPA's October 8, 2004 Letter memorialized the District's agreement to address two issues related to the Valero Permit. One issue pertains to applicability determinations for support facilities. EPA does not have adequate information demonstrating that the Valero facility has support facilities, nor has Petitioner provided any such information. EPA therefore finds no basis to object to the Permit and denies the Petition as to this issue.

The second issue pertains to the removal of a permit shield from BAAQMD Regulation 8-2. EPA has reviewed the most recent version of the Permit and determined that the shield was removed. Therefore, EPA is denying Petitioner's request to object to the permit as this issue is moot.

B Permit Application

Applicable Requirements

Petitioner alleges that EPA must object to the Permit because it contains unresolved applicability determinations due to "deficiencies in the application and permit process" as identified in Attachment 2 to EPA's October 8, 2004 letter to the District.

During EPA's review of the Permit, BAAQMD asserted that, notwithstanding any alleged deficiencies in the application and permit process, the Permit sufficiently addressed these items or the requirements were not applicable. EPA requested that the District review some of the determinations of adequacy and non-applicability that it had already made. EPA believes that this process has resulted in improved applicability determinations. Petitioners have failed to demonstrate that such a generalized allegation of "deficiencies in the application and permit process" actually resulted in or may have resulted in a flaw in the Permit. Therefore, EPA denies the Petition on this basis.

2. Identification of Insignificant Sources

Petitioner contends that the permit application failed to list insignificant sources, resulting in a "lack of information ... [that] inhibits meaningful public review of the Title V permit." Petitioner further contends that, contrary to District permit regulations, the application failed to include a list of all emission units, including exempt and insignificant sources and activities, and failed to include emissions calculations for each significant source or activity. Petitioner lastly alleges that the application lacked an emissions inventory for sources not in operation during 1993.

Under Part 70, applications may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate a required fee amount. 40 C.F.R. § 70.5(c). Emission calculations in support of the above information are required. 40 C.F.R. § 70.5(c)(3)(viii). An application must also include a list of insignificant activities that are exempted because of size or production rate. 40 C.F.R. § 70.5(c).

District Regulation 2-6-405.4 requires applications for title V permits to identify and describe "each permitted source at the facility" and "each source or other activity that is exempt from the requirement to obtain a permit . . ." EPA's Part 70 regulations, which prescribe the minimum elements for approvable state title V programs, require that applications include a list of insignificant sources that are exempted on the basis of size or production rate. 40 C.F.R.

§ 70.5(c). EPA's regulations have no specific requirement for the submission of emission calculations to demonstrate why an insignificant source was included in the list.

Petitioner makes no claim that the Permit inappropriately exempts insignificant sources from any applicable requirements or that the Permit omits any applicable requirements. Similarly, Petitioner makes no claim that the inclusion of emission calculations in the application would have resulted in a different permit. Because Petitioner failed to demonstrate that the alleged flaw in the permitting process resulted in, or may have resulted in, a deficiency in the permit, EPA is denying the Petition on this ground.

EPA also denies Petitioner's claim because Petitioner fails to substantiate its generalized contention that the Permit is flawed. The Statement of Basis unambiguously explains that Section III of the Permit, *Generally Applicable Requirements*, applies to all sources at the facility, including insignificant sources:

> This section of the permit lists requirements that generally apply to all sources at a facility including insignificant sources and portable equipment that may not require a District permit....[S]tandards that apply to insignificant or unpermitted sources at a facility (e.g., refrigeration units that use more than 50 pounds of an ozone-depleting compound), are placed in this section.

Thus, all insignificant sources subject to applicable requirements are properly covered by the Permit.

Petitioner also fails to explain how meaningful public review of the Permit was "inhibited" by the alleged lack of a list of insignificant sources from the permit application.[4] We find no permit deficiency otherwise related to missing insignificant source information in the Permit application.

In addition, Petitioner fails to point to any defect in the Permit as a consequence of any missing significant emissions calculations in the permit application. The Statement of Basis for Section IV of the Permit states, "This section of the Permit lists the applicable requirements that apply to permitted or significant sources." Therefore, all significant sources and activities are properly covered by the Permit.

With respect to a missing emissions inventory for sources not in operation during 1993, Petitioner again fails to point to any resultant flaw in the Permit. These sources are appropriately addressed in the Permit.

For the foregoing reasons, EPA is denying the Petition on these issues

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[4] In another part of the Petition, addressed below, Petitioner argues that the District's delay in providing requested information violated the District's public participation procedures approved to meet 40 C.F.R. § 70.7.

3. Identification of Non-Compliance

Petitioner argues that the District should have compelled the refinery to identify non-compliance in the application and provide supplemental information regarding non-compliance during the application process prior to issuance of the final permit on December 1, 2003. In support, Petitioner cites the section of its Petition (III.D.) alleging that the refinery failed to properly update its compliance certification.

Title V regulations do not require an applicant to supplement its application with information regarding non-compliance,[5] unless the applicant has knowledge of an incorrect application or of information missing from an application. Pursuant to 40 C.F.R. § 70.5(c)(8)(i) and (iii)(C), a standard application form for a title V permit must contain, *inter alia*, a compliance plan that describes the compliance status of each source with respect to all applicable requirements and a schedule of compliance for sources that are not in compliance with all applicable requirements at the time the permit issues. Section 70.5(b), *Duty to supplement or correct application*, provides that any applicant who fails to submit any relevant facts, or who has submitted incorrect information, in a permit application, shall, upon becoming aware of such failure or incorrect submission, promptly submit such supplemental or corrected information. In addition, Section 70.5(c)(5) requires the application to include "[o]ther specific information that may be necessary to implement and enforce other applicable requirements ... or to determine the applicability of such requirements."

Petitioner does not show that the refinery had failed to submit any relevant facts, or had submitted incorrect information, in its 1996 initial permit application. Consequently, the duty to supplement or correct the permit application described at 40 C.F.R. § 70.5(b) has not been triggered in this case.

Moreover, EPA disagrees that the requirement of 40 C.F.R. § 70.5(c)(5) requires the refinery to update compliance information in this case. The District is apprised of all new information arising after submittal of the initial application – such as NOVs, episodes and complaints – that may bear on the implementation, enforcement and/or applicability of applicable requirements. In fact, the District has an inspector assigned to the plant to assess compliance at least on a weekly basis. Therefore, it is not necessary to update the application with such information, as it is already in the possession of the District. Petitioner has failed to demonstrate that the alleged failure to update compliance information in the application resulted in, or may have resulted in, a deficiency in the Permit. For the foregoing reasons, EPA denies the Petition on this issue.

C. Assurance of Compliance with All Applicable Requirements Pursuant to the Act, Part 70 and BAAQMD Regulations

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[5] As discussed *infra*, title V regulations also do not require permit applicants to update their compliance certifications pending permit issuance.

1 Compliance Schedule

In essence, Petitioner claims that the District's consideration of the facility's compliance history during the title V permitting process was flawed because the District decided not to include a compliance schedule in the Permit despite a number of NOVs and other indications, in Petitioner's view, of compliance problems, and the District did not explain why a compliance schedule is not necessary. Specifically, Petitioner alleges that EPA must object to the Permit because the "District ignored evidence of recurring or ongoing compliance problems at the facility, instead relying on limited review of outdated records, to conclude that a compliance schedule is unnecessary." Petition at 11-19. Petitioner further alleges that a compliance schedule is necessary to address NOVs issued to the plant (including many that are still pending)[6], one-time episodes[7] reported by the plant, recurring violations and episodes at certain emission units, complaints filed with the District, and the lack of evidence that the violations have been resolved. The relief sought by Petitioner is for the District to include "a compliance schedule in the Permit, or explain why one was not necessary." *Id.* Petitioner additionally charges that, due to the facility's poor compliance history, additional monitoring, recordkeeping and reporting requirements are warranted to assure compliance with all applicable requirements. *Id.*

Section 70.6(c)(3) requires title V permits to include a schedule of compliance consistent with Section 70.5(c)(8). Section 70.5(c)(8) prescribes the requirements for compliance schedules to be submitted as part of a permit application. For sources that are not in compliance with applicable requirements at the time of permit issuance, compliance schedules must include "a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance." 40 C.F.R. § 70.5(c)(8)(iii)(C). The compliance schedule should "resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject." *Id.*

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, such as Petitioner's claims that the District improperly considered the facility's compliance history, EPA considers whether a Petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. See CAA § 505(b)(2) (requiring an objection "if the petitioner demonstrates ... that the permit is not in compliance with the requirements of this Act...."). In Petitioner's view, the deficiency that resulted here is the lack of a compliance schedule. For the reasons explained below, EPA grants

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[6]BAAQMD Regulation 1:401 provides for the issuance of NOVs: "Violation Notice: A notice of violation or citation shall be issued by the District for all violations of District regulations and shall be delivered to persons alleged to be in violation of District regulations. The notice shall identify the nature of the violation, the rule or regulation violated, and the date or dates on which said violation occurred."

[7]According to BAAQMD, "episodes" are "reportable events, but are not necessarily violations." Letter from Adan Schwartz, Senior Assistant Counsel, BAAQMD to Gerardo Rios, EPA Region IX, dated January 31, 2005.

the Petition to require the District to address in the Permit's Statement of Basis the NOVs that the District has issued to the facility and, in particular, NOVs that have not been resolved because they may evidence noncompliance at the time of permit issuance. EPA denies the Petition as to Petitioner's other compliance schedule issues.

a. Notices of Violation

In connection with its claim that the Permit is deficient because it lacks a compliance schedule, Petitioner states that the District issued 85 NOVs to Valero between 2001 and 2004 and 51 NOVs in 2003 and 2004. Petitioner highlights that, as of October 22, 2004, all 51 NOVs issued in 2003 and 2004 were unresolved and still "pending." Petition at 14-15. To support its claims, Petitioner attached to the Petition various District compliance reports and summaries, including a list of NOVs issued between January 1, 2003 and October 1, 2004. Thus, Petitioner essentially claims that the District's consideration of these NOVs during the title V permitting process was flawed, because the District did not include a compliance schedule in the Permit and did not explain why a compliance schedule is not necessary.

As noted above, EPA's Part 70 regulations require a compliance schedule for "applicable requirements for sources that are not in compliance with those requirements at the time of permit issuance." 40 C.F.R. §§ 70.6(c)(3), 70.5(c)(8)(iii)(C). Consistent with these requirements, EPA has stated that a compliance schedule is not necessary if a violation is intermittent, not on-going, and has been corrected before the permit is issued. *See In the Matter of New York Organic Fertilizer Company*, Petition Number II-2002-12 at 47-49 (May 24, 2004). EPA has also stated that the permitting authority has discretion not to include in the permit a compliance schedule where there is a pending enforcement action that is expected to result in a compliance schedule (i.e., through a consent order or court adjudication) for which the permit will be eventually reopened. *See In the Matter of Huntley Generating Station*, Petition Number II-2002-01, at 4-5 (July 31, 2003); *see also In the Matter of Dunkirk Power, LLC*, Petition Number II-2002-02, at 4-5 (July 31, 2003).[8]

Using the District's own enforcement records, Petitioner has demonstrated that approximately 50 NOVs were pending before the District at the time it proposed the revised Permit. The District's most recent statements, as of January 2005, do not dispute this fact.[9] The

[8]These orders considered whether a compliance schedule was necessary to address (i) opacity violations for which the source had included a compliance schedule with its application; and (ii) PSD violations that the source contested and was litigating in federal district court. As to the uncontested opacity violations, EPA required the permitting authority to reopen the permits to either incorporate a compliance schedule or explain that a compliance schedule was not necessary because the facility was in compliance. As to the contested PSD violations, EPA found that "[i]t is entirely appropriate for the [state] enforcement process to take its course" and for a compliance schedule to be included only after the adjudication has been resolved.

[9]As stated in a letter from Adan Schwartz, Senior Assistant Counsel, BAAQMD, to Gerardo Rios, Air Division, U.S. EPA Region 9, dated January 31, 2005, "The District is following up on each NOV to achieve an appropriate resolution, which will likely entail payment of a civil penalty." EPA provided a copy of this letter to

permitting record shows that the District issued the initial Permit on December 1, 2003 and the revised Permit on December 16, 2004. According to the District, the facility did not have noncompliance issues at the time it issued the initial and revised permits. The permitting record contains the following statements:

- July 2003 Statement of Basis,"Compliance Schedule" section: "The BAAQMD Compliance and Enforcement Division has conducted a review of compliance over the past year and has no records of compliance problems at this facility." July 2003 Statement of Basis at 12.

  July 2003 Statement of Basis, "Compliance Status" section: "The Compliance and Enforcement Division has prepared an Annual Compliance Report for 2001... The information contained in the compliance report has been evaluated during the preparation of the Statement of Basis for the proposed major Facility Review permit. The main purpose of this evaluation is to identify ongoing or recurring problems that should be subject to a schedule of compliance. No such problems have been identified." July 2003 Statement of Basis at 35. This section also noted that the District issued eight NOVs to the refinery in 2001, but did not discuss any NOVs issued to the refinery in 2002 or the first half of 2003. EPA notes that there appear to have been approximately 36 NOVs issued during that time, each of which is identified as pending in the documentation provided by Petitioner.

  December 16, 2004 Statement of Basis: "The facility is not currently in violation of any requirement. Moreover, the District has updated its review of recent violations and has not found a pattern of violations that would warrant imposition of a compliance schedule." December 2004 Statement of Basis at 34.

  2003 Response to Comments ("RTC") (from Golden Gate University): "The District's review of recent NOV's failed to reveal any evidence of current ongoing or recurring noncompliance that would warrant a compliance schedule." 2003 RTC (GGU) at 1.

EPA finds that the District's statements at the time it issued the initial and revised Permits do not provide a meaningful explanation for the lack of a compliance schedule in the Permit. Using the District's own enforcement records, Petitioner has demonstrated that there were approximately 50 unresolved NOVs at the time the revised Permit was issued in December 2004. The District's statements in the permitting record, however, create the impression that no NOVs were pending at that time. Although the District acknowledges that there have been "recent violations," the District fails to address the fact that it had issued a significant number of NOVs to the facility and that many of the issued NOVs were still pending. Moreover, the District provides only a conclusory statement that there are no ongoing or recurring problems that

Petitioner on February 23, 2005

could be addressed with a compliance schedule and offers no explanation for this determination. The District's statements give no indication that it actually reviewed the circumstances underlying recently issued NOVs to determine whether a compliance schedule was necessary. The District's mostly generic statements as to the refinery's compliance status are not adequate to support the District's decision that no compliance schedule was necessary in light of the NOVs.[10]

Because the District failed to include an adequate discussion in the permitting record regarding NOVs issued to the refinery, and, in particular, those that were pending at the time the Permit was issued, and an explanation as to why a compliance schedule is not required, EPA finds that Petitioner has demonstrated that the District's consideration of the NOVs during the title V permitting process may have resulted in a deficiency in the Permit. Therefore, EPA is granting the Petition to require the District to either incorporate a compliance schedule in the Permit or to provide a more complete explanation for its decision not to do so.

When the District reopens the Permit, it may consider EPA's previous orders in the Huntley, Dunkirk, and New York Organic Fertilizer matters to make a reasonable determination that no compliance schedule is necessary because (i) the facility has returned to compliance; (ii) the violations were intermittent, did not evidence on-going non-compliance, and the source was in compliance at the time of permit issuance; or (iii) the District has opted to pursue the matter through an enforcement mechanism and will reopen the permit upon a consent agreement or court adjudication of the noncompliance issues. Consistent with previous EPA orders, the District must also ensure that the permit shield will not serve as a bar or defense to any pending enforcement action.[11] *See Huntley* and *Dunkirk* Orders at 5.

b. Episodes

Petitioner also cites the number of "episodes" at the plant in the years 2003 and 2004 as a basis for requiring a compliance schedule. Episodes are events reported by the refinery of equipment breakdown, emission excesses, inoperative monitors, pressure relief valve venting, or other facility failures. Petition at 15, n. 21. According to the District, "[e]pisodes are reportable events, but are not necessarily violations. The District reviews each reported episode. For those that represent a violation, an NOV is issued." Letter from Adan Schwartz, Senior Assistant Counsel, BAAQMD to Gerardo Rios, EPA Region IX, dated January 31, 2005. The summary chart entitled "BAAQMD Episodes" attached to the Petition shows that the District specifically

[10]In contrast, EPA notes that the state permitting authority in the Huntley and Dunkirk Orders provided a thorough record as to the existence and circumstances regarding the pending NOVs by describing them in detail in the permits and acknowledging the enforcement issues in the public notices for the permits. Huntley at 6, Dunkirk at 6. In addition, EPA found that the permits contained "sufficient safeguards" to ensure that the permit shields would not preclude appropriate enforcement actions. *Id.*

[11]After reviewing the permit shield in the Permit, EPA finds nothing in it that could serve as a defense to enforcement of the pending NOVs. The District, however, should still independently perform this review when it reopens the Permit.

records for each episode, under the heading "Status," its determination for each episode: (i) no action; (ii) NOV issued; (iii) pending; and (iv) void. This document supports the District's statement that it reviews each episode to see whether it warrants an NOV. Because not every episode is evidence of noncompliance, the number of episodes is not a compelling basis for determining whether a compliance schedule is necessary. Moreover, Petitioner did not provide additional facts, other than the summary chart, to demonstrate that any reported episodes are violations. EPA therefore finds that Petitioner has not demonstrated that the District's consideration of the various episodes may have resulted in a deficiency in the Permit, and EPA denies the Petition as to this issue.

c. Repeat Violations and Episodes at Particular Units

Petitioner claims that certain units at the plant are responsible for multiple episodes and violations, "possibly revealing serious ongoing or recurring compliance issues." Petition at 16. The Petition then cites, as evidence, the existence of 16 episodes and 8 NOVs for the FCCU Catalytic Regenerator (S-5), 9 episodes and 4 NOVs for a hot furnace (S-220), 9 episodes and 2 NOVs for the Heat Recovery Steam Generator (S-1031), and 3 episodes and 2 NOVs for the South Flare (S-18).

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

d. Complaints

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

e. Allegation that Problems are not Resolved

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

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

2. Non-Compliance Issues Raised by Public Comments

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

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

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

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

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

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

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

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

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

by these activities

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

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

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

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

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

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

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

3. Intermittent and Continuous Compliance

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

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

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

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

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

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

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

4. Compliance Certifications

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

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

D. Statement of Basis

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

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

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

- Neither Statement of Basis addresses BAAQMD's compliance determinations

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

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

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

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

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

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

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

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

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

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

E Permit Shields

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

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

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

40 C.F.R. §§ 60.7(c) and (d)

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

BAAQMD Regulation 1-522.8 requires that

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

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

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

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

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

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

2. BAAQMD Regulation 11-7

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

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

3. 40 C.F.R. § 60.482-7(g)

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

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

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

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

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

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

F. Throughput Limits for Grandfathered Sources

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

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

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

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

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

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

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

- Throughput limits on grandfathered sources are not federally enforceable.

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

December 1, 2003 RTC at 31-33.

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

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

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

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

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

G. Monitoring

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

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

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

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

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

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

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

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

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

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

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

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

Petition on these grounds.

2 Flare Opacity Monitoring

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

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

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

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

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

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

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

3 Cooling Tower Monitoring

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

a. Regulation 8-2

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

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

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

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

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

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

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

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

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

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

b. Regulation 6

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

(1) Regulation 6-310

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

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

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

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

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

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

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

(2) Regulation 6-311

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

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

(3) Regulation 6-305

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

(4) Regulation 6-301

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

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

4. Monitoring of Pressure Relief Valves

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

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

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

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

5. Additional Monitoring Problems Identified by Petitioner

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H. Miscellaneous Permit Deficiencies

1 Missing Federal Requirements for Flares (Subpart CC)

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

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

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

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

b. 40 C.F.R. Part 63, Subparts A and CC

40 C.F.R. Part 63, Subpart CC contains the Maximum Achievable Control Technology ("MACT") requirements for petroleum refineries. Under Subpart CC, the owner or operator of a Group 1 miscellaneous process vent, as defined in § 63.641, must reduce emissions of Hazardous Air Pollutants either by using a flare that meets the requirements of section 63.11 or by using another control device to reduce emissions by 98% or to a concentration of 20 ppmv. 40 C.F.R. § 63.643(a)(1). If a flare is used, a device capable of detecting the presence of a pilot flame is required. 40 C.F.R. § 63.644(a)(2).

The applicability provisions of Subpart CC are set forth in section 63.640, "Applicability and designation of affected source." Section 63.640(a) provides that Subpart CC applies to petroleum refining process units and related emissions points. The Applicability section further provides that affected sources subject to Subpart CC include emission points that are "miscellaneous process vents." 40 C.F.R. § 63.640(c)(1). The Applicability section also provides that affected sources do not include emission points that are routed to a fuel gas system. 40 C.F.R. § 63.640(d)(5). Gaseous streams routed to a fuel gas system are specifically excluded from the definition of "miscellaneous process vent," as are "episodic or nonroutine releases such as those associated with startup, shutdown, malfunction, maintenance, depressuring, and catalyst transfer operations." 40 C.F.R. § 63.641.

The District's Statement of Basis indicates that flares S-18 and S-19 are not subject to MACT Subpart CC pursuant to the exemption set forth in 40 C.F.R. § 63.640(d)(5). *See* December 16, 2004 Statement of Basis at 18. In the BAAQMD February 15, 2005 Letter, BAAQMD again asserted section 63.640(d)(5) as a basis for finding that the refinery's flares are not required to meet the standards in Subpart CC. EPA continues to believe that a detailed analysis of the configuration of the flare and compressor is required to exempt a flare on the basis that it is part of the fuel gas system.

BAAQMD's February 15, 2005 letter also provides an alternative rationale that gases vented to the refinery's flares are not within the definition of "miscellaneous process vents." Specifically, BAAQMD asserts that the flares are not miscellaneous process vents because they are used only to control "episodic and nonroutine" releases. As BAAQMD states:

> At all of the affected refineries, process gas collected by the gas recovery system are routed to flares only under two circumstances: (1) situations in which, due to process upset or equipment malfunctions, the gas pressure in the flare header rises to a level that breaks the water seal leading to the flares; or (2) situations in which, during process startups, shutdown, malfunction, maintenance, depressuring [sic], and catalyst transfer operations are, by definition, not miscellaneous process vents, and are not subject to

Subpart CC

EPA agrees that a flare used only under the two circumstances described by the District would not be subject to Subpart CC because such flares are not used to control miscellaneous process vents as that term is defined in § 63.641. According to the BAAQMD February 15, 2005 Letter, BAAQMD intends to revise the Statement of Basis to further explain its rationale that Subpart CC does not apply to the Bay Area refinery flares, and intends to solicit public comment on its rationale.

Because the Permit and the Statement of Basis for Valero's flares S-18 and S-19 contain contradictory information with regard to the use of these flares, EPA agrees with Petitioner that the Statement of Basis is lacking a sufficient analysis regarding the applicability of MACT CC to these flares. Therefore, EPA is granting the Petition on this issue. BAAQMD must reopen the Permit to address applicability in the Statement of Basis, and, if necessary, to include the flare requirements of MACT Subpart CC in the Permit.

2 Basis for Tank Exemptions

Petitioner claims that the statement of basis and the Permit lack adequate information to support the proposed exempt status for numerous tanks identified in Table IIB of the Permit.

Table IIB of the Permit contains a list of 43 emission sources that have applicable requirements in Section IV of the Permit but that were determined by the District to be exempt from BAAQMD Regulation 2, which specifies the requirements for Authorities to Construct and Permits to Operate. Rule 1 of the regulation contains numerous exemptions that are based on a variety of physical and circumstantial grounds. EPA agrees with Petitioner that the Permit itself contains insufficient information to determine the basis for the exempt status of the equipment with respect to the exemptions in the rule. However, for most of the sources in Table IIB, Petitioner's claim that the Statement of Basis lacks the information is factually incorrect. Petitioner is referred to pages 94-99 of the Statement of Basis that accompanied the Permit issued by the District on December 1, 2003. Nonetheless, EPA is granting Petitioner's request on a limited basis for the reasons set forth below.

EPA's regulations state that the permitting authority must provide the Agency with a statement of basis that sets forth the legal and factual basis for the permit conditions. 40 C.F.R. § 70.7(a)(5). EPA has provided guidance on the content of an adequate statement of basis in a letter dated December 20, 2001, from Region V to the State of Ohio[24] and in a Notice of Deficiency (NOD) issued to the State of Texas.[25] These documents describe several key elements of a statement of basis, specifically noting that a statement of basis should address any

[24] The letter is available at: http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/sbguide.pdf.

[25] 67 Fed. Reg. 732 (January 7, 2002)

federal regulatory applicability determinations. The Region V letter also recommends the inclusion of topical discussions on issues including but not limited to the basis for exemptions. Further, in response to a petition filed in regard to the title V permit for the Los Medanos Energy Center, EPA concluded that a statement of basis should document the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and EPA with a record of the applicability and technical issues surrounding the issuance of the permit. Such a record ought to contain a description of the origin or basis for each permit condition or exemption. *See, Los Medanos*, at 10.

As stated in *Los Medanos*, the failure of a permitting authority to meet the procedural requirement to provide a statement of basis does not necessarily demonstrate that the title V permit is substantively flawed. In reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, EPA considers whether the petitioner has demonstrated that the permitting authority's failure resulted in, or may have resulted in, a deficiency in the content of the permit. *See* CAA § 505(b)(2) (objection required "if the petitioner demonstrates . . . that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable [SIP]"); *see also* 40 C.F.R. § 70.8(c)(1). Thus, where the record as a whole supports the terms and conditions of the permit, flaws in the statement of basis generally will not result in an objection. *See e.g., Doe Run*, at 24-25. In contrast, where flaws in the statement of basis resulted in, or may have resulted in, deficiencies in the title V permit, EPA will object to the issuance of the permit.

With regard to the Valero Permit, the majority of the sources listed in Table IIB are identified in the December 1, 2003 Statement of Basis along with a citation from Regulation 2 describing the basis of the exemption. For the sources that fall within this category, EPA finds that the permit record supports the District's determination for the exempt status of the equipment. However, in reviewing the December 16, 2004 Statement of Basis, EPA noted that three of the sources listed in Table IIB of the Permit are not included in the statement of basis with the corresponding citations for the exemptions.[26] For these sources, the failure of the record to support the terms of the Permit is adequate grounds for objecting to the Permit. Therefore, EPA is granting Petitioner's request to object to the Permit with respect to the listing of exempt sources in Table IIB but only as the request pertains to the three sources identified herein. Although EPA is not aware of other errors, the District should review the circumstances for all of the sources in Table IIB and the corresponding table in the statement of basis to further ensure that the Permit is accurate and that the record adequately supports the Permit. EPA also encourages the District to add the citation for each exemption to Table IIB as was done for the ConocoPhillips, Chevron, and Shell permits.

3 Public Participation

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[26]Compare Table IIB of the Permit with the December 1, 2003 statement of basis for the LPG Truck Loading Rack, the TK-2710 Fresh Acid Tank, and the Cogeneration Plant Cooling Tower.

Petitioner argues that the District did not, in a timely fashion, make readily available to the public, compliance information that is relevant to evaluating whether a schedule of compliance is necessary. Specifically, Petitioner asserts that it had to make several requests under the California Public Records Act to obtain "relevant information concerning NOVs issued to the facility between 2001 and 2004" and the "2003 Annual Report and other compliance information, which is not readily available." Petitioner states that it took three weeks for the District to produce the information requested in Petitioner's "2003 PRA request." Petitioner contends that it expended significant resources to obtain the data and received the data so late in the process that they could not be sufficiently analyzed.

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, such as Petitioner's claims here that the District failed to comply with public participation requirements, EPA considers whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. *See* CAA, Section 505(b)(2)(objection required "if the petitioner demonstrates ... that the permit is not in compliance with the requirements of [the Act], including the requirements of the applicable [SIP].") EPA's title V regulations specifically identify the failure of a permitting authority to process a permit in accordance with procedures approved to meet the public participation provisions of 40 C.F.R. § 70.7(h) as grounds for an objection. 40 C.F.R. § 70.8(c)(3)(iii). District Regulations 2-6-412 and 2-6-419 implement the public participation requirements of 40 C.F.R. § 70.7(h). District Regulation 2-6-412, *Public Participation, Major Facility Review Permit Issuance*, approved by EPA as meeting the public participation provisions of 40 C.F.R. § 70.7(h), provides for notice and comment procedures that the District must follow when proposing to issue any major facility review permit. The public notice, which shall be published in a major newspaper in the area where the facility is located, shall identify, *inter alia*, information regarding the operation to be permitted, any proposed change in emissions, and a District source for further information. District Regulation 2-6-419, *Availability of Information*, requires the contents of the permit applications, compliance plans, emissions or compliance monitoring reports, and compliance certification reports to be available to the public, except for information entitled to confidential treatment.

Petitioner fails to demonstrate that the District did not process the permit in accordance with public participation requirements. The District duly published a notice regarding the proposed initial issuance of the permit. The notice, *inter alia*, referenced a contact for further information. The permit application, compliance plan, emissions or compliance monitoring reports, and compliance certification reports are available to the public through the District's Web site or in the District's files, which are open to the public during business hours. Petitioner admits that it ultimately obtained the compliance information it sought, albeit later than it wished. Petitioner fails to show that the perceived delay in receiving requested documents resulted in, or may have resulted in, a deficiency in the Permit. Therefore, EPA denies the Petition on this issue.

IV TREATMENT, IN THE ALTERNATIVE, AS A PETITION TO REOPEN

As explained in the Procedural Background section of this Order, EPA received and dismissed a prior petition ("2003 OCE Petition") from this Petitioner on a previous version of the Permit at issue in this Petition. EPA's response in this Order to issues raised in this Petition that were also included in the 2003 OCE Petition also constitutes the Agency's response to the 2003 Petition. Furthermore, EPA considers the Petition validly submitted under CAA section 505(b)(2). However, if the Petition should be deemed to be invalid under that provision, EPA also considers, in the alternative, the Petition and Order to be a Petition to Reopen the Permit and a response to a Petition to Reopen the Permit, respectively.

V CONCLUSION

For the reasons set forth above, and pursuant to section 505(b)(2) of the Clean Air Act, I deny in part and grant in part OCE's Petition requesting that the Administrator object to the Valero Permit. This decision is based on a thorough review of the draft permit, the final Permit issued December 16, 2004, and other documents pertaining to the issuance of the Permit.

MAR 15 2005

Date

Stephen L. Johnson
Acting Administrator

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)
ONYX ENVIRONMENTAL SERVICES	)
	) ORDER RESPONDING TO
	) PETITIONERS' REQUEST THAT
Petition number V-2005-1	) THE ADMINISTRATOR OBJECT
CAAPP No. 163121AAP	) TO ISSUANCE OF A STATE
Proposed by the Illinois	) OPERATING PERMIT
Environmental Protection Agency	)
	)

ORDER AMENDING PRIOR ORDER PARTIALLY DENYING AND PARTIALLY GRANTING PETITION FOR OBJECTION TO PERMIT

EPA has become aware of a factual error in the February 1, 2006 Order Responding to Petitioners' Request that the Administrator Object to Issuance of a proposed State Operating Permit for Onyx Environmental Services. To correct that error, I am amending the February 1, 2006 Order by striking out the section entitled "VI. Monitoring" and replacing it with the language appearing below. As a result of the correction, I am hereby granting the petition on that issue.

The amended language for section VI is as follows:

VI. Monitoring

The Petitioners argue that the Administrator must object to the proposed Onyx permit because it fails to include conditions that meet the legal requirements for monitoring. The Petitioners cite condition 7.1.8.b.ii. on page 56 of the proposed Onyx permit, which provides that Onyx must install, calibrate, maintain, and operate Particulate Matter Continuous Emission Monitors (PM CEMs) to demonstrate compliance. Petitioners note that the next clause provides that the permittee need not comply with the requirement to "install, calibrate, maintain, and operate the PM CEMs until such time that U.S. EPA promulgates all performance specifications and operational requirements for PM CEMs." Petitioners argue that there are no PM monitoring requirements established in the permit without the obligation to install and operate the PM CEMs, which is contingent on future U.S. EPA action. Petition at 18.

U.S. EPA promulgated the performance specification for PM CEMs (Performance Standard 11) on January 12, 2004. However, U.S. EPA has not yet promulgated the operational requirements for PM CEMs. Accordingly, the requirement to install and operate PM CEMs does not currently apply to Onyx, although the permit properly requires PM CEMs once U.S. EPA promulgates such operational requirements. However, subpart EEE contains other

requirements intended to help assure compliance with the PM limits, including a requirement for bag leak detection monitoring.[6] The Onyx facility is equipped with baghouses, and therefore Onyx is required to operate and maintain a system to detect leaks from the baghouses, but the permit currently lacks provisions requiring a leak detection system. Accordingly, the lack of a currently applicable requirement to operate and maintain PM CEMs does not make the permit deficient under 40 C.F.R. 70.6(a)(3)(i)(B), but Petitioners are correct that the permit lacks monitoring required under other provisions of 40 C.F.R. §70.6, and therefore I am granting the petition on this issue and directing IEPA to revise the permit to incorporate all PM monitoring required for the facility under subpart EEE, including a leak detection system.[7]

I am not revising the Order issued February 1 in any other way and its provisions, other than section VI, remain undisturbed and in effect.

Dated: AUG -9 2006

Stephen L. Johnson
Administrator

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[6] See Final Technical Support Document for HWC MACT Standards, Vol. IV: Compliance with the HWC MACT Standards (July 1999).

[7] Subpart EEE has been amended since the permit was proposed by IEPA, although the requirement for bag leak detection applied to the Onyx facility at the time the permit was proposed. In re-proposing the permit, IEPA should ensure that the permit properly reflects all of the current MACT requirements

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

APR 30 2014

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits

FROM: Stephen D. Page
Director

TO: Regional Air Division Directors, Regions 1-10

This memorandum and attachments provide guidance on satisfying the Clean Air Act title V annual compliance certification reporting and statement of basis requirements. It addresses two outstanding recommendations made by the Office of Inspector General (OIG) in the report titled, "Substantial Changes Needed in Implementation and Oversight of Title V Permits if Program Goals are to be Fully Realized," (OIG Report No. 2005-P-00010):

Recommendation 2-1: Develop and issue guidance or rulemaking on annual compliance certification content, which requires responsible officials to certify compliance with all applicable terms and conditions of the permit, as appropriate.

Recommendation 2-3: Develop nationwide guidance on the contents of the statement of basis which includes discussions of monitoring, operational requirements, regulatory applicability determinations, explanation of any conditions from previously issued permits that are not being transferred to the title V permit, discussion of streamlining requirements, and other factual information, where advisable, including a list of prior title V permits issued to the same applicant at the plant, attainment status, and construction, permitting, and compliance history of the plant.

In a February 8, 2013, memorandum to the OIG, the EPA stated its intent to address these two recommendations, as well as similar recommendations from the Clean Air Act Advisory Committee's Title V Task Force (*see* "Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience," April 2006).

The attachments below provide non-binding guidance that responds to OIG recommendations regarding annual compliance certification and statement of basis. The attachments highlight existing statutory and regulatory requirements and guidance issued by the EPA, and state and local permitting authorities. In addition, the attachments highlight key components of the applicable legal requirements and clarifications responsive to certain OIG recommendations. As you are aware, this information was developed in collaboration with EPA regional offices. Note that state and local permitting authorities

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also provide guidance on title V requirements; the EPA encourages sources to consult with their state and local permitting authorities to obtain additional information or to obtain specific guidance.

If you have any questions, please contact Juan Santiago, Associate Director, Air Quality Policy Division/OAQPS, at (919) 541-1084, *santiago.juan@epa.gov*.

Attachments

Disclaimer

These documents explain the requirements of the EPA regulations, describes the EPA policies, and recommends procedures for sources and permitting authorities to use to ensure that the annual compliance certification and the statement of basis are consistent with applicable regulations. These documents are not a rule or regulation, and the guidance they contain may not apply to a particular situation based upon the individual facts and circumstances. The guidance does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. The use of non-mandatory language such as "guidance," "recommend," "may," "should," and "can," is intended to describe the EPA policies and recommendations. Mandatory terminology such as "must" and "required" is intended to describe controlling requirements under the terms of the Clean Air Act and the EPA regulations, but the documents do not establish legally binding requirements in and of themselves.

Attachment 1

Implementation Guidance on Annual Compliance Certification Requirements Under the Clean Air Act Title V Operating Permits Program

I. Overview of Title V and Annual Compliance Certification Requirements

Title V of the Clean Air Act (CAA or Act) establishes an operating permits program for major sources of air pollutants, as well as other sources. CAA sections 501-507; 42 U.S.C. Sections 7661-7661f. A detailed history and description of title V of the CAA is available in the preamble discussions of both the proposed and final original regulations implementing title V – the first promulgation of 40 CFR Part 70. *See* 57 FR 32250 (July 21, 1992) (Final Rule); 56 FR 21712 (May 10, 1991) (Proposed Rule). The EPA recently provided further information regarding compliance certification history in a proposed rulemaking titled, "Amendments to Compliance Certification Content Requirements for State and Federal Operating Permits Programs," published on March 29, 2013. 78 FR 19164. Under title V, states are required to develop and implement title V permitting programs in conformance with program requirements promulgated by the EPA in 40 CFR Part 70. Title V requires that every major stationary source (and certain other sources) apply for and operate pursuant to an operating permit. CAA section 502(a) and 503. The operating permit must contain conditions that assure compliance with all of the sources' applicable requirements under the CAA. CAA section 504(a). Title V also states, among other requirements, that sources certify compliance with the applicable requirements of their permits no less frequently than annually (CAA section 503(b)(2)), provides authority to the EPA to prescribe procedures for determining compliance and for monitoring and analysis of pollutants regulated under the CAA (CAA section 504(b)), and requires each permit to "set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." (CAA section 504(c).)

This guidance document focuses on the annual compliance certification, which applies to the terms and conditions of issued operating permits. CAA section 503(b)(2) states that the EPA's regulations implementing title V "shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority." CAA section 504(c) states that each title V permit issued "shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. . . Any report required to be submitted by a permit issued to a corporation under this subchapter shall be signed by a responsible corporate official, who shall certify its accuracy." Additional requirements of compliance certification are described in section 114(a)(3) of the CAA as follows:

> The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance

> status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section [availability of information to the public].

CAA section 114(a)(3), 42 U.S.C. section 7414(a)(3). The EPA promulgated regulations implementing these provisions for title V operating permits purposes. Key regulatory provisions regarding compliance certifications are found in 40 CFR section 70.6(c), "Compliance requirements."

II. Overview of Annual Compliance Certification Requirements

The EPA's regulations at 40 CFR section 70.6(c) describe the required elements of annual compliance certifications. Specifically, 40 CFR section 70.6(c)(5)(iii)-(iv) provides that all permits must include the following annual compliance certification requirements:

> (iii) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):
>
> (A) The identification of each term or condition of the permit that is the basis of the certification;
>
> (B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section;
>
> (C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred; and
>
> (D) Such other facts as the permitting authority may require to determine the compliance status of the source.
>
> (iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority.
>
> (6) Such other provisions as the permitting authority may require.

Further information surrounding compliance certification is described in the regulatory provision addressing the criteria for a permit application, 40 CFR section 70.5(d). There have been revisions to Part 70 since its original promulgation in 1992.

One rulemaking action relevant to compliance certifications was in response to an October 29, 1999, remand from the United States Court of Appeals for the District of Columbia Circuit in *Natural Resources Defense Council (NRDC)* v. *EPA*, 194 F.3d 130 (D.C. Cir. 1999). In that case, the Court upheld a portion of the EPA's compliance assurance monitoring rule, but remanded back to the EPA the need to ensure 40 CFR sections 70.6(c)(5)(iii) and 71.6(c)(5)(iii) were consistent with language in CAA section 114(a)(3) which states that compliance certifications shall include, among other requirements, " 'whether compliance is continuous or intermittent.' " *NRDC* at 135 (internal citations omitted). Accordingly, the EPA proposed to add appropriate language to paragraph (c)(5)(iii)(C) of both 40 CFR sections 70.6 and 71.6. However, the final rule on June 27, 2003 (68 FR 38518) inadvertently deleted an existing sentence from the regulations (which was not related to the addition which resulted from the D.C. Circuit decision). The OIG Report referenced this issue and in response to the OIG, as agreed, the EPA has proposed to restore the inadvertently deleted sentence back into the rule. *See, e.g.,* 78 FR 19164 (March 29, 2013). This proposed rule would reinstate the inadvertently removed sentence – which, consistent with the Credible Evidence rule, requires owners and operators of sources to "identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information" – in its original place before the semicolon at the end of 40 CFR sections 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B). The EPA is still reviewing comments received on this proposal; however, today's guidance document is based on statutory and long-standing regulatory requirements regarding compliance certifications, obligations for "reasonable inquiry" and consideration of credible evidence, many of which were also relied upon in the EPA's proposal.

III. Implementation of the Annual Compliance Certification Requirements

The statutory and regulatory provisions regarding compliance certification provide direction to sources and permitting authorities regarding implementation of these provisions. Nonetheless, questions arise periodically and, as a general matter, responding to those questions typically occurs on a case-by-case basis, consistent with the statutory and regulatory requirements, as well as applicable state or local regulations. Questions may be posed to authorized permitting authorities, EPA Regional Offices, or EPA Headquarters offices. As a general matter, where formal responses are provided by EPA, such responses may be searched and viewed on various websites. These include, among others:

- *http://www.epa.gov/ttn/oarpg/t5pgm.html*

- Environmental Appeals Board (EAB) decisions on PSD permitting
http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/PSD+Permit+Appeals+(CAA)?OpenView
Environmental Appeals Board (EAB) decisions on title V permitting
http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Title+V+Permit+Appeals?OpenView

- The EPA's online searchable database of many PSD and title V guidance documents issued by EPA headquarters offices and EPA Regions (operated by Region 7) *http://www.epa.gov/region07/air/policy/search.htm.*

- The EPA's online searchable database of CAA title V petitions and issued orders (operated by Region 7) *http://www.epa.gov/region7/air/title5/petitiondb/petitiondb.htm.*[1]

A review of these databases indicates that there are a number of issues that arise with some regularity and those general questions and responses are addressed below. In addition, the EPA notes that state and local permitting authorities are also a source of guidance on compliance certification form, instructions, and content. In some circumstances, state and local permitting authorities may require additional content for the annual compliance certification. *See, e.g.,* 40 CFR sections 70.6(c)(5)(iii)(D) and (c)(6). As a result, sources should review such requirements prior to completing the annual compliance certification.

A. Level of Specificity in Describing the Permit Term or Condition

The CAA and the EPA's regulations require that the annual compliance certification identify the terms and conditions that are the subject of the certification. As a general matter, specificity ensures that the responsible official has in fact reviewed each term and condition, as well as considered all appropriate information as part of the certification.[2] This does not mean, however, that each and every permit term and condition needs to be spelled out in its entirety in the annual compliance certification or that the certification needs to resemble a checklist of each permit term and condition. While some sources (and states) use what is informally referred to as a "long form" for certifications (where each term or condition is typically individually identified), such forms are not expressly required by either the CAA or the EPA's regulations, even though it may be advisable to use such a form.

The certification should include sufficient specificity and must identify the terms and conditions that are being covered by the certification. 40 CFR section 70.6(c)(5)(iii)(A)-(D). As a "best practice," sources may include additional information where there are unique or complex permit conditions such that "compliance" with a particular term and condition is predicated on several elements. In that case, additional information in the annual compliance certification may be advisable to explain how compliance with a particular condition was determined and, thus, the basis for the certification of compliance.

Consistent with the EPA's regulations, the annual compliance certification must include "[t]he identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period." 40 CFR section 70.6(c)(5)(iii)(B). For example, there may be situations where certification is based on electronic

[1] The EPA's practice is to publish a notice in the *Federal Register* announcing that a petition order was signed. Once signed, the EPA's practice is to place a copy of that final order on the title V petition order database, which is searchable online.

[2] The EPA's regulations require that a "responsible official" sign the compliance certification. The term "responsible official" is defined in 40 CFR section 70.2.

data from continuous emissions monitoring devices, which may result in a fairly straightforward annual compliance certification. Alternatively, there may be situations where compliance during the reporting period was determined through parametric monitoring, which requires the source to consider various data and perform a mathematical calculation, to determine the compliance status. In that latter situation when various data from parametric monitoring are combined via calculation, the annual compliance certification may contain more detail regarding that term or condition which relies on parametric monitoring in the permit.[3]

Regardless of the level of specificity provided for the particular terms and conditions in the annual certification itself, the minimum regulatory requirements include "[t]he identification of each term or condition of the permit that is the basis of the certification." 40 CFR Section 70.6(c)(5)(iii)(A). As noted above, there may be different ways to meet this requirement. For example, when referencing a permit term or condition in the certification, if the permit incorporates by reference a citation without explaining the particular term or condition, the source may choose to provide additional clarity in the compliance certification to support the certification. Another situation where additional specificity may be advisable is where a source has an alternative operating scenario where the source may be best served by providing additional compliance related information in support of the certification. As another example, the part 71 federal operating permits program administered by the EPA includes a form, and instructions, for sources to use for their annual compliance certifications. Annual Compliance Certification (A-COMP), EPA Form 5900-04, at page 4, available at: *http://www.epa.gov/airquality/permits/pdfs/a-comp.pdf*. This form is not expressly required for non-EPA permitting authorities; however, this form and the instructions provide feedback regarding what to include in an annual compliance certification.

Importantly, permitting authorities have additional compliance certification requirements and/or recommendations that sources should consult before finalizing a compliance certification in order to ensure compliance with the applicable requirements. *See, e.g.*, 40 CFR section 70.6(c)(6).

B. Form of the Certification

As a general matter, there is no requirement in the Act or in Part 70 that a source use a specific form for the compliance certification (although some states have adopted specific forms and instructions). The most relevant consideration in certifications is not the form, but the content and clarity of the terms and conditions with which the compliance status is being certified. Some state permitting authorities have developed template forms and instructions to assist sources in ensuring compliance with applicable requirements. The EPA has not provided such templates, except as noted above where a form is provided for the EPA's part 71 permit program. While templates are not required by the statute or the regulations, they can be useful tools (e.g., to facilitate electronic reporting and consistency) so long as sources consider whether the form adequately covers their permitting and certification situation, and the sources are able to make adjustments where appropriate to ensure compliance. The type of form used should be

[3] The CAA and the EPA's regulations require other more frequent compliance reports in addition to the annual compliance certification. In some circumstances, it may be helpful for a source to reference another compliance report in the annual compliance certification, as appropriate.

considered in light of the regulatory requirement to certify compliance with the specific terms and conditions of the permit. 40 CFR section 70.6(c)(5)(iii)(C). Additionally, as was noted earlier, because approved state and local areas may require additional elements in the annual compliance certifications, sources should confirm that their form is consistent with applicable state and local permitting requirements.

C. Certification Language

The EPA's regulations at 40 CFR section 70.5(d) require that the annual compliance certification include the following language: "Based on information and belief formed after reasonable inquiry, I certify that the statements and information in this certification are true, accurate, and complete." (Emphasis added.) While the EPA appreciates that each permit includes specific monitoring requirements, additional data may be available that indicate compliance (or noncompliance). The EPA recently proposed to provide additional clarity on this issue by proposing to restore a sentence to 40 CFR section 70.6(c)(5)(iii)(B) that had been inadvertently deleted, as discussed above.

IV. Discussion of Compliance Certification Content in Clean Air Act Advisory Committee Final Report on the Title V Implementation Experience

In the EPA's February 8, 2013, memorandum to the OIG, stated its intent to address the OIG's recommendation concerning the annual compliance certification, as well as similar recommendations from the Clean Air Act Advisory Committee's Title V Task Force.[4] While this guidance document responds to the 2005 OIG Report, information provided above overlaps with recommendations from the Title V Task Force. This guidance document does not adopt the Task Force recommendations; however, to the extent that they overlap with the discussion above, the EPA provides some observations regarding those recommendations.

Section 4.7 of the Task Force Report discusses compliance certification forms. This section includes, among other items, comments from stakeholders, a summary of the Task Force discussions, and Task Force recommendations. Of the five recommendations included in this section of the Report, three were unanimously supported by the Task Force members (Recommendations 3, 4, and 5). Task Force Final Report at 119-120. EPA's discussion above regarding the level of specificity and the form of the annual compliance certification generally addresses the two recommendations for which there was not consensus within the Task Force (Recommendations 1 and 2).

The five recommendations, directly quoted from the Task Force Report, are as follows:

[4] In April 2006, the Title V Task Force finalized a document titled, "Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience." This document was the result of the Task Force's efforts to review the implementation and performance of the operating permit program under title V of the 1990 Clean Air Act Amendments. Included in the report are a number of recommendations, including some specific recommendations regarding compliance certifications that are consistent with existing regulations and information provided in this guidance document.

Recommendation #1. Most of the Task Force endorsed an approach akin to the "short form" certification, believing that a line-by-line listing of permit requirements is not required and imposes burdens without additional compliance benefit. Under this approach, the compliance certification form would include a statement that the source was in continuous compliance with permit terms and conditions with the exception of noted deviations and periods of intermittent compliance. Although the permittee would cross-reference the permit for methods of compliance, in situations where the permit specifies a particular monitoring method but the permittee is relying on different monitoring, testing or other evidence to support its certification of compliance, that reliance should be specifically identified in the certification and briefly explained. An example of such a case would be where the permit requires continuous temperature records to verify compliance with a minimum temperature requirement. If the chart recorder data was not recorded for one hour during the reporting period because it ran out of ink, and the source relies on the facts that the data before and after the hour shows temperature above the requirement minimum and that the alarm system which sounds if temperature falls below setpoint was functioning and did not alarm during the hour, these two items would be noted as the data upon which the source relies for certifying continuous compliance with the minimum temperature requirement.

Recommendation #2. Others on the Task Force believed that more detail than is included in the short form is needed in the compliance certification to assure source accountability and the enforce-ability of the certification. These members viewed at least one of the following options as acceptable (some members accepting any, while others accepting only one or two):

1. The use of a form that allows sources to use some cross-referencing to identify the permit term or condition to which compliance was certified. Cross-referencing would only be allowed where the permit itself clearly numbers or letters each specific permit term or condition, clearly identifies required monitoring, and does not itself include cross-referencing beyond detailed citations to publicly accessible regulations. The compliance certification could then cite to the number of a permit condition, or possibly the numbers for a group of conditions, and note the compliance status for that permit condition and the method used for determining compliance. In the case of permit conditions that are not specifically numbered or lettered, the form would use text to identify the requirement for which the permittee is certifying.
2. Use of the long form.
3. Use of the permit itself as the compliance certification form with spaces included to identify whether compliance with each condition was continuous or intermittent and information regarding deviations attached.

Recommendation # 3. Where the permit specifies a particular monitoring or compliance method and the source is relying on other information, that information should be separately specified on the certification form.

Recommendation # 4. Where a permit term does not impose an affirmative obligation on the source, the form should not require a compliance certification; e.g., where the permit states that it does not convey property rights or that the permitting authority is to undertake some activity such as provide public notice of a revision.

Recommendation # 5. All forms should provide space for the permittee to provide additional explanation regarding its compliance status and any deviations identified during the reporting period.

Task Force Final Report at 118-120.[5] With regard to these recommendations, the EPA offers several observations. First, there is nothing in the CAA or Part 70 that prohibits Recommendation 3, 4, and 5, which had unanimous support from the Task Force. *See* 40 CFR section 70.6(c)(5)(iii)-(iv). Second, with regard to Recommendations 3 and 5, these should be considered "best practices" to ensure that the annual certification provides adequate information. Third, Recommendations 1 and 2 outline different ideas surrounding the level of specificity and the form of the annual compliance certification. This guidance document does address those issues and recommends activities consistent with the regulatory requirements while also providing some flexibility on the level of specificity depending on the complexity of the permit conditions being certified.

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[5] With regard to the first recommendation, the EPA observes that the example provided in the Task Force Report identifies a scenario in which additional narrative on the annual compliance certification form would be useful to explain the determination that the sources was (or was not) in compliance with a permit term or condition.

Attachment 2

Implementation Guidance on Statement of Basis Requirements Under the Clean Air Act Title V Operating Permits Program

I. Overview of Legal Requirements for Statement of Basis

Section 502 of the CAA addresses title V permit programs generally. Among other required elements of the EPA's rules implementing title V, Congress stated that the regulations shall include:

> Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions....

CAA section 502(b)(6). The EPA's regulations implementing title V require that a permitting authority provide "a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to the EPA and to any other person who requests it." 40 CFR section 70.7(a)(5). As will be discussed below, among other purposes, the statement of basis is intended to support the requirements of CAA section 502(b)(6) by providing information to allow for "expeditious" evaluation of the permit terms and conditions, and by providing information that supports public participation in the permitting process, considering other information in the record.

Since the EPA promulgated its Part 70 regulations, the EPA has provided additional guidance and information surrounding the statement of basis. This information is available on EPA's searchable online database of Title V guidance (*http://www.epa.gov/region07/air/policy/search.htm*). A search of that database reveals numerous documents dating back to 1996 that provide feedback regarding the content of the statement of basis.[1] Because the specific content of the statement of basis depends in part on the terms and conditions of the individual permit at issue, the EPA's regulations are intended to provide flexibility to the state and local permitting authorities regarding content of the statement of basis. The statement of basis is required to contain, as the regulation states, sufficient information to explain the "legal and factual basis for the draft permit conditions." 40 CFR section 70.7(a)(5).

II. Guidance on the Content of Statement of Basis

Since promulgation of the Part 70 regulations, the EPA has provided guidance on recommended contents of the statement of basis. Taken as a whole, various title V petition orders and other documents, particularly those cited in those orders, provide a good roadmap as to what should be

[1] *See, e.g.*, Region 10 Questions & Answers No. 2: Title V Permit Development (March 19, 1996) (available online at *http://www.epa.gov/region07/air/title5/t5memos/r10qa2.pdf*).

included in a statement of basis on a permit-by-permit basis, considering, among other factors, the technical complexity of a permit, history of the facility, and the number of new provisions being added at the title V permitting stage. This guidance document identifies a few such documents for example purposes and provides references for locating such materials on the Internet.

The EPA provided an overview of this guidance in a 2006 title V petition order. *In the Matter of Onyx Environmental Services*, Order on Petition No. V-2005-1 (February 1, 2006) (*Onyx Order*) at 13-14. In the *Onyx Order*, in the context of a general overview statement on the statement of basis, the EPA explained,

> A statement of basis must describe the origin or basis of each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that U.S. EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from simply a straight recitation of applicable requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring that is required under 40 C.F.R. § 70.6(a)(3)(i)(B). Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and U.S. EPA a record of the applicability and technical issues surrounding the issuance of the permit. (Footnotes omitted.) *See, e.g., In Re Port Hudson Operations, Georgia Pacific,* Petition No. 6-03-01, at pages 37-40 (May 9, 2003) *("Georgia Pacific"); In Re Doe Run Company Buick Mill and Mine,* Petition No. VII-1999-001, at pages 24-25 (July 31, 2002) *("Doe Run"); In Re Fort James Camas Mill,* Petition No. X-1999-1, at page 8 (December 22, 2000) (*"Ft. James"*).

Onyx Order at 13-14. In the *Onyx Order*, there is a reference to a February 19, 1999, letter that identified elements which, if applicable, should be included in the statement of basis. In that letter to Mr. David Dixon, Chair of the California Air Pollution Control Officers Association (CAPCOA) Title V Subcommittee, the EPA Region 9 Air Division provided a list of air quality factors to serve as guidance to California permitting authorities that should be considered when developing a statement of basis for purposes of EPA Region 9's review. Specifically, this letter identified the following elements which, if applicable, should be included in the statement of basis:

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

- plant wide allowable emission limits (PAL) or other voluntary limits,
- any district permits to operate or authority to construct permits,
- periodic monitoring decisions, where the decisions deviate from already agreed-upon levels. These decisions could be part of the permit package or could reside in a publicly available document. (Parenthetical omitted)

Enclosure to February 19, 1999, letter from Region 9 to Mr. David Dixon.

In 2001, in a letter from the EPA to the Ohio Environmental Protection Agency, which is also cited to in the *Onyx Order*, the EPA explained that:

> The [statement of basis] should also include factual information that is important for the public to be aware of. Examples include:
>
> 1. A listing of any Title V permits issued to the same applicant at the plant site, if any. In some cases it may be important to include the rationale for determining that sources are support facilities.
> 2. Attainment status.
> 3. Construction and permitting history of the source.
> 4. Compliance history including inspections, any violations noticed, a listing of consent decrees into which the permittee has entered and corrective action(s) taken to address noncompliance.

Letter from Stephen Rothblatt, EPA Region 5 to Robert Hodanbosi, Ohio EPA, December 20, 2001 (available online at *http://www.epa.gov/region07/air/title5/t5memos/sbguide.pdf*). In 2002, in the context of finding deficiencies with the State of Texas operating permits program, the EPA explained that, "a statement of basis should include, but is not limited to, a description of the facility, a discussion of any operational flexibility that will be utilized at the facility, the basis for applying the permit shield, any federal regulatory applicability determinations, and the rationale for the monitoring methods selected." 67 FR 732, 735
(January 7, 2002).

The EPA has also addressed statement of basis contents in additional title V petition orders (available in an online searchable database at
http://www.epa.gov/region7/air/title5/petitiondb/petitiondb.htm). In some cases, title V petition orders provide information even where a statement of basis is not directly at issue. For example, the EPA has interpreted 40 CFR section 70.7(a)(5) to require that the rationale for selected monitoring methods be clear and documented in the permit record. *In the Matter of CITGO Refining and Chemicals Company LP (CITGO)*, Order on Petition No. VI-2007-01 (May 28, 2009) at 7; *see also In the Matter of Fort James Camas Mill* (*Fort James*), Order on Petition No. X-1999-1 (December 22, 2000) at page 8. This type of information could be included in the statement of basis. The EPA observes that where such information is included in the statement of basis, this can facilitate a better understanding of the rationale for monitoring. Such information could also be included in other parts of the permit record. In addition, it is particularly helpful when the statement of basis identifies key issues that the permitting authority anticipates would be a priority for EPA or public review (for example, if such issues represent new conditions or

interpretations of applicable requirements that are not explicit on their face). *See, e.g., In the Matter of Consolidated Edison Co. Of NY, Inc. Ravenswood Steam Plant,* Order on Petition No. II-2001-08 (Sept. 30, 2003) at page 11; *In the Matter of Port Hudson Operation Georgia Pacific,* Order on Petition No. 6-03-01 (May 9, 2003) at pages 37-40; *In the Matter of Doe Run Company Buick Mill and Mine (Doe Run)*, Order on Petition No. VII-1999-001 (July 31, 2002) at pages 24-26; *In the Matter of Los Medanos Energy Center* (Order on Petition) (May 24, 2004) at pages 14-17.

Each of the various documents referenced above provide generalized recommendations for developing an adequate statement of basis rather than "hard and fast" rules on what to include. Taken as a whole, they provide a good roadmap as to what should be included in a statement of basis on a permit-by-permit basis, considering, among other factors, the technical complexity of the permit, history of the facility, and the number of new provisions being added at the title V permitting stage.[2]

III. Discussion of Statement of Basis Content in Clean Air Act Advisory Committee Final Report on the Title V Implementation Experience

In the EPA's February 8, 2013, memorandum to the OIG, the EPA stated its intent to address the OIG's recommendation concerning the statement of basis, as well as similar recommendations from the Clean Air Act Advisory Committee's Title V Task Force.[3] While this guidance document responds to the 2005 OIG Report, information provided above overlaps with recommendations from the Title V Task Force. This guidance document does not adopt the Task Force recommendations; however, to the extent that they overlap with the discussion above, the EPA provides some observations regarding those recommendations.

Section 5.5 of the Task Force Final Report addresses the statement of basis. This section includes a regulatory background piece, comments from stakeholders, a summary of the Task Force discussions, and Task Force recommendations. The recommendations section includes a list of items considered appropriate for inclusion into a statement of basis. Final Report at 231. Members of the Task Force unanimously supported the recommendations regarding the statement of basis. Because these recommendations overlaps substantially, if not wholly, with guidance previously provided by EPA, it is appropriate to include these recommendations within this guidance document as an additional guideline for developing an adequate statement of basis.

The Task Force recommended that the following items are appropriate for inclusion in a statement of basis document:

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[2] With regard to the title V permitting stage, a best practice includes making previous statements of basis accessible to give background on provisions that already exist in the permit and may not be a part of the permit action at issue, and provide context for the permit as a whole and the particular revisions at issue in that permit action or permit stage.

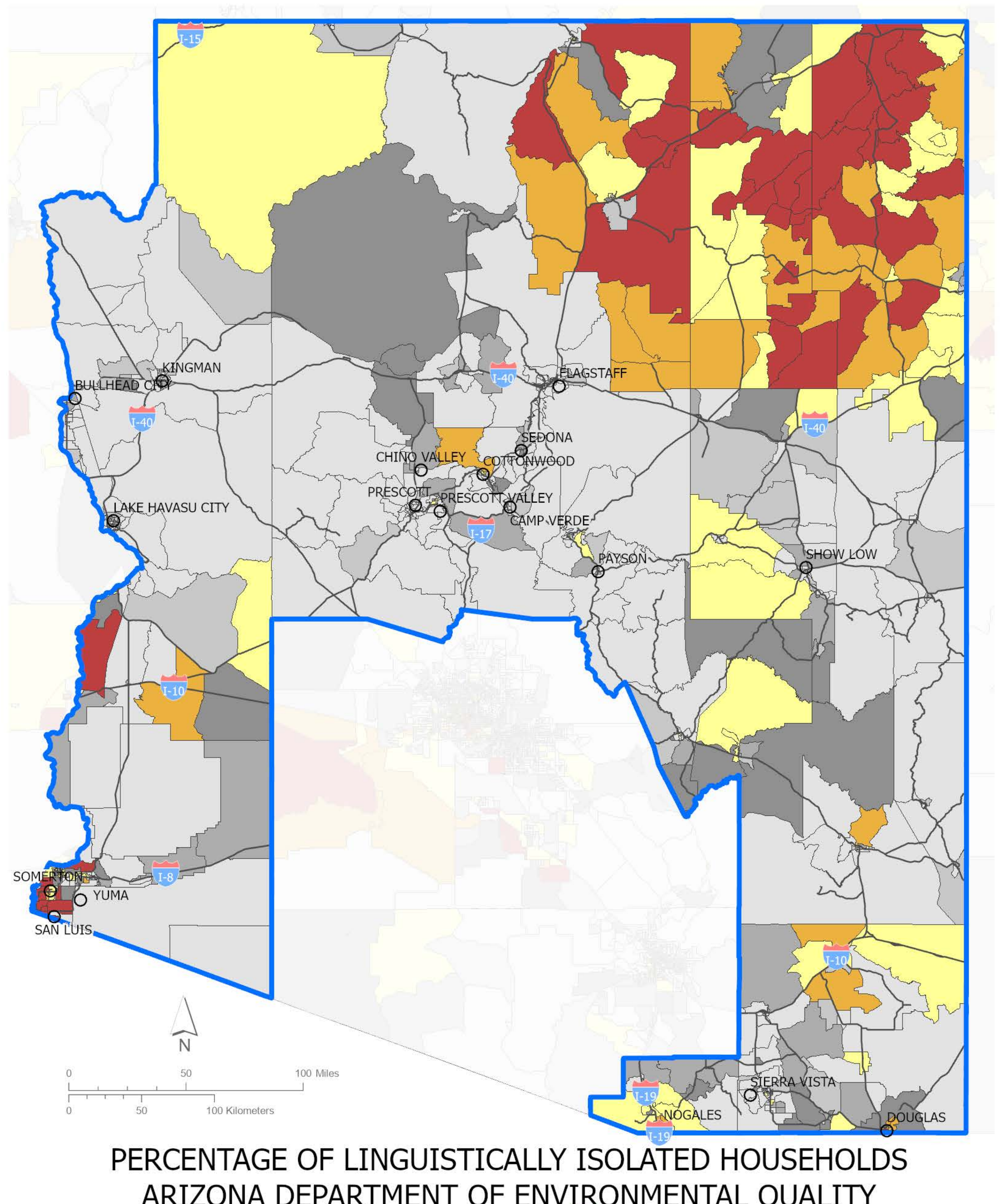
[3] In April 2006, the Title V Task Force finalized a document titled, "Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience." This document was the result of the Task Force's efforts to review the implementation and performance of the operating permit program under title V of the 1990 Clean Air Act Amendments. Included in the report are a number of recommendations, including specific recommendations regarding statement of basis contents that overlap with or are informative to this guidance document.

1. A description and explanation of any federally enforceable conditions from previously issued permits that are not being incorporated into the Title V permit.
2. A description and explanation of any streamlining of applicable requirements pursuant to EPA White Paper No. 2.
3. A description and explanation of any complex non-applicability determination (including any request for a permit shield under section 70.6(f)(1)(ii)) or any determination that a requirement applies that the source does not agree is applicable, including reference to any relevant materials used to make these determinations (e.g., source tests, state guidance documents).
4. A description and explanation of any difference in form of permit terms and conditions, as compared to the applicable requirement upon which the condition was based.
5. A discussion of terms and conditions included to provide operational flexibility under section 70.4(b)(12).
6. The rationale, including the identification of authority, for any Title V monitoring decision.

Task Force Final Report at 231. With regard to these recommendations, the EPA offers several observations. First, there is nothing in the CAA or Part 70 that precludes a permitting authority from including the items listed above in a statement of basis. Not all of those items will apply to every permit action (as is the case with the lists provided by the EPA in the previously-cited guidance documents). Second, concerning item #1, we note that there are very limited circumstances in which a condition from a previously issued permit would not need to be incorporated into the title V permit. Third, concerning item #2, the "White Paper" refers to "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program", dated March 5, 1996 (available online at *http://www.epa.gov/region07/air/title5/t5memos/wtppr-2.pdf*).

In developing the statement of basis, as was discussed earlier, the EPA recommends that permitting authorities consider the individual circumstances of the permit action in light of the regulatory requirements for the permit record in order to determine whether information along the lines of the items identified by the Task Force warrants inclusion into the statement of basis. In making this determination, the permitting authority is encouraged to consider whether the inclusion of such information would provide important explanatory information for the public and the EPA, and bolster the defensibility of the permit (thus improving the efficiency of the permit process and reducing the likelihood of receiving an adverse comment or an appeal), while also ensuring that the statutory and regulatory requirements are being met.

Appendix D. Map of Linguistically Isolated Households in the ADEQ



PERCENTAGE OF LINGUISTICALLY ISOLATED HOUSEHOLDS ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Linguistically Isolated Households

- Data Not Available
- Less than 50%ile
- 50-60%ile
- 60-70%ile
- 70-80%ile
- 80-90%ile
- 90-95%ile
- 95-100%ile
- Arizona DEQ

EPA

ARD20077_ADEQ_Linguistic_Isolation.mxd (June 10, 2020)
Sources: U.S. Environmental Protection Agency, Headquarters (2020), Teledyne (2012).

Appendix E. Fee Information

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

MAR 27 2018

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V

FROM: Peter Tsirigotis
Director

TO: Regional Air Division Directors, Regions 1 – 10

The attached guidance is being issued in response to the Environmental Protection Agency Office of Inspector General's (OIG) 2014 report regarding the importance of enhanced EPA oversight of state, local, and tribal[1] fee practices under title V of the Clean Air Act (CAA).[2] Specifically, this guidance reflects the EPA's August 22, 2014, commitment to the OIG in response to OIG's Recommendation 1 to "assess our existing fee guidance and to re-issue, revise, or supplement such guidance as necessary" (we refer to the attached guidance as the "**updated fee schedule guidance**"). The EPA's response to the OIG's other recommendations are being issued concurrently in a separate memorandum and guidance concerning title V program and fee evaluations ("title V evaluation guidance").[3]

Title V of the CAA and 40 CFR part 70 contain the minimum requirements for operating permit programs developed and administered by air agencies, including requirements that each program issue operating permits to certain facilities (facilities that are "major sources" of air pollution and certain other facilities) and that each program charge fees ("permit fees") to these facilities to fund the permit program. These operating permits are intended to identify all federal air pollution control requirements that apply to a facility ("applicable requirements") and to require the facility to track and report compliance pursuant to a series of recordkeeping and reporting requirements. Section 502(b)(3) of the CAA requires each air agency to collect fees "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer" its title V permit program.[4] The 40 CFR part 70 regulations establish the minimum program

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[1] As used herein, the term "air agency" refers to state, local, and tribal agencies.

[2] *Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air Act Title V Revenues*; U.S. EPA Office of the Inspector General. Report No. 15-P-0006, October 20, 2014 ("OIG Report").

[3] *Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70*, Peter Tsirigotis, Director, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018 ("title V evaluation guidance"). See the EPA's title V guidance website at *https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index*.

[4] 42 U.S.C. § 7661a(b)(3)(A).

requirements for operating permit programs, including requirements for fees to be administered by air agencies with approved part 70 programs.[5]

On August 4, 1993, the EPA issued a memorandum, commonly referred to as the "1993 fee schedule guidance," to provide initial guidance on the Agency's approach to reviewing fee schedules for part 70 programs.[6] Since that time, the EPA has issued a number of memoranda and a final rule[7] that have touched upon, revised, or clarified certain topics contained in the 1993 fee schedule guidance.[8] The attached updated fee schedule guidance provides additional direction on how the EPA interprets the title V permit issuance and fee collection activities, as well as discussion of other fee requirements for air agencies. In addition to the memoranda and final rule noted above, the updated fee schedule guidance includes numerous changes to remove outdated regulatory provisions and focuses on the review of existing part 70 programs, rather than on initial program submittals.[9]

The updated fee schedule guidance sets forth updated principles, which will generally guide the EPA's review of part 70 fee programs. These updates are consistent with the fee requirements of title V and part 70, as well as prior guidance on fee requirements. Accordingly, these updates do not themselves provide substantively new fee guidance or create any inconsistencies with fee requirements or prior fee guidance.

The development of this guidance included outreach and discussions with stakeholders, including the EPA Regions, the National Association of Clean Air Agencies, and the Association of Air Pollution Control Agencies.

If you have any questions concerning the updated fee schedule guidance, please contact Juan Santiago, Associate Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, at (919) 541-1084 or *santiago.juan@epa.gov*.

Attachments:
1. Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs under Title V
2. Attachment A – List of Guidance Relevant to Part 70 Fee Requirements
3. Attachment B – Example Presumptive Minimum Calculation

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[5] 40 C.F.R. § 70.9.
[6] *See Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs under Title V*, John S. Seitz, Director, OAQPS, U.S. EPA, to Air Division Directors, Regions I-X (August 4, 1993) ("1993 fee schedule guidance") at page 1. Note that there was an earlier document on this subject that was superseded by the 1993 fee schedule guidance.
[7] *See* the October 23, 2015, final rule, *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units*, 80 FR 64510, 64633 (Section XII.E "Implications for Title V Fee Requirements for GHGs").
[8] A list of the relevant title V fee-related guidance memoranda is included as Attachment A.
[9] At this time, all air agencies have EPA-approved part 70 programs. It is conceivable that additional part 70 program submittals will be received in the future for a number of Indian tribes, and, if so, the EPA will work closely with the tribes to assist them with identifying activities which must be included in costs related to the program submittal and to meet other fee requirements of part 70.

DISCLAIMER

These documents explain the requirements of the EPA regulations, describe the EPA policies, and recommend procedures for sources and permitting authorities to use to ensure that title V fee schedules and fee evaluations are consistent with applicable regulations. These documents are not a rule or regulation, and the guidance they contain may not apply to a particular situation based upon the individual facts and circumstances. The guidance does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. The use of non-mandatory language such as "guidance," "recommend," "may," "should," and "can," is intended to describe the EPA policies and recommendations. Mandatory terminology, such as "must" and "required," is intended to describe controlling requirements under the terms of the Clean Air Act and the EPA's regulations, but the documents do not establish legally binding requirements in and of themselves.

Updated Guidance on EPA Review of
Fee Schedules for Operating Permit Programs under Title V

The purpose of this document and the attachments is to provide guidance on the Environmental Protection Agency's (EPA's) review of fee schedules for operating permit programs under 40 CFR part 70 (part 70), the regulations that set minimum requirements for permit programs administered by state, local, and tribal air agencies (referred to here as, "air agencies") authorized under title V of the Clean Air Act (CAA or Act). This document updates and clarifies the previous fee schedule guidance issued by the EPA on August 4, 1993 (the "1993 fee schedule guidance").[1] This updated fee schedule guidance clarifies which permit program costs must be included in an analysis to demonstrate that adequate fees are collected to fund all part 70 program costs. The guidance also discusses other fee-related requirements for air agencies. The updated fee schedule guidance focuses on the costs of program implementation, rather than on the costs of initial program development (as was the case for the 1993 fee schedule guidance).

I.a General Principles for Review of Title V Fee Schedulesa

Section 502(b)(3)(A) of the Act requires operating permit programs to fund all "reasonable direct and indirect costs" of the permit programs through fees collected from "part 70 sources"[2] and requires thet fees to be sufficient to cover all reasonable permit program costs.[3] The terms "fee schedule" and "permit fees" are sometimes used interchangeably to describe the fees that an air agency charges to part 70 sources to fulfill this requirement.[4] Section II of this guidance provides an explanation of the termt "direct and indirect costs" and a detailed explanation of specific permit program activities to be included in costs for the purpose of analyzing whether the permit fees are sufficient to cover all the permit program costs.

The fees collected under a part 70 program are classified as "exchange revenue" or "earned revenue" in governmental accounting guidance because a good or service (e.g., a permit) is provided by a governmental entity in exchange for a price (e.g., a permit fee).t[5] Also, governmental accounting guidance provides that only revenue classified as "exchange revenue" should be compared to costs to

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[1] *See Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs under Title V*, Johne S. Seitz, Director, OAQPS, U.S. EPA, to Air Division Directors, Regions I-X (August 4, 1993) ("1993 fee schedulee guidance").e

[2] The term "part 70 sources" is defined in 40 CFR § 7.2 to mean "any source subject to the permitting requirements of this part, as provided in 40 CFR §§ 70.3(a) and 70.3(b) of this part." Thus, a source is a part 70 source prior to obtaining a part 70 permit if the source is subject to permitting under the applicability provisions of 40 CFR § 70.3.

[3] *See* 40 CFR § 70.9(a).

[4] The fee schedule is typically included in the regulations that the air agency uses to implement part 70; it is a component of the part 70 program. The fee schedule (and other elements of an air agency's regulations for part 70) can vary significantly across air agencies.

[5] *See* Statement of Recommended Accounting Standards Number 7, *Accounting for Revenue and Other Financing Sourcese and Concepts for Reconciling Budgetary and Financial Accounting*, issued by the Federal Accounting Standards Advisory Board (FASAB) ("FASAB No. 7") at page 2. *See also* Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998), issued by the Governmental Accounting Standards Board (GASB) at pages 1-4 ("GASB No. 33").

determine the overall financial results of operations for a period.[6] This means that legislative appropriations, taxes, grants,[7] fines and penalties, which are generally characterized as "nonexchange revenue,"[8] should not be compared to part 70 program costs to determine if permit fees are sufficient to cover costs.

Any fee required by part 70 must "be used solely for permit program costs" (in other words, the feesa must not beadiverted for non-part 70 purposes).[9] Manyaair agencies transfer fees that are inaexcess of program costs for a particular year into accounts to be used forapart 70 purposes in another year when there is expected to bea fee shortfall, and this is an acceptable practice. However, if title V fees are transferred for uses not authorized by part 70 (e.g., highway maintenance or other general obligations of government), they would be considered improperly diverted.

Each air agency is required, as part of its part 70 program submittal, to submit a "fee demonstration" to show that its fee schedule would result in the collection and retention of fees sufficient to cover program costs, including an "initial accounting" to show that "required fee revenues" would be used solely to cover program costs.[10]

The EPA will generally presume that a feeaschedule is sufficient to cover program costs if it results in the collection and retention of fees in an amount above the "presumptive minimum" —i.e., "an amount *notaless than* \$25 per ton" adjusted annually for increases in the Consumer Price Index[11] "times the total tons of the actual emissions of each regulated air pollutant (for presumptive fee calculation) emitted from part 70 sources," plus any greenhouse gas (GHG) cost adjustments, asaapplicable.[12] A fee schedule that is expected to result in fees above the "presumptive minimum" isaconsidered to be "presumptively adequate." Note that the "presumptive minimum" isaunique to each air agency because the total tons of actual emissions of "regulated air pollutants (for presumptive fee calculation)" are unique to each air agency.

As part of a fee demonstration, air agencies with fee schedules that would not be presumptively adequate are required to submit a "detailed accounting" to show that collection and retention of fee

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[6] *See* FASAB No. 7 at page 8; GASB No. 33.

[7] Concerning grants, an EPA memo, *Use of Clean Air Act Title V Permit Fees as Match for Section 105 Grants*, Gerald Yamada, Acting General Counsel, U.S. EPA, to Michael H. Shapiro, Acting Assistant Administrator, Office of Air and Radiation, U.S. EPA, October 22, 1993, states that part 70 fees are "program income" under 40 CFR § 31.25(a), and, because of this, part 70 fees cannot be used as match for section 105 grants and no air agency may count the same activity for botht grant and part 70 fee purposes.t

[8] "Nonexchange revenue" arises primarily from the exercise of governmental power to demand payment from the public (e.g., income tax, sales tax, property taxes, fines, and penalties) and when a government gives value directly without directly receiving equal value in return (e.g., legislative appropriations and intergovernmental grants).

[9] *See* 40 CFR § 70.9(a).

[10] *See* 40 CFR §§ 70.9(c)-(d) (fee demonstration requirements); 1993 fee schedule guidance (explaining that preparing the fee demonstrations that is part of the initial part 70 program submittal).

[11] *See* CAAt§ 502(b)(3)(B); 40 CFR § 70.9(b). The presumptive minimum fee rate is adjusted for increases in the Consumer Price Index each year in September. The fee rate for the period of September 1, 2016, through August 31, 2017, is \$48.88 per ton. For more information, including a list of historical adjustment to the fee rate, *see https://www.epa.gov/title-v-operating-permits/permit-fees*.

[12] *See* 40 CFR § 70.9(b)(2) (emphasis added). The components of the "presumptive minimum" calculation—including certain emissions that may be excluded from the calculation, and an upward "GHG cost adjustment" that may apply—are addressed in 40 CFR §§ 70.9(b)(2)(i)-(v).

revenue would be sufficient to cover program costs.[13] Air agencies are also required to provide an "initial accounting" to show how "required fee revenues" will be used solely to cover permitting program costs.[14] Air agencies with fee schedules considered "presumptively adequate" are nevertheless required to submit fee demonstrations,[15] but they may be "presumptive minimum program cost" demonstrations[16] showing that expected fee revenues are above the "presumptive minimum" calculated for the air agency. In order to receive the EPA's approval, any fee demonstration must provide an "initial accounting" showing how required fee revenues will be used solely to cover program costs.[17]

After an air agency fee program is approved by the EPA, there are several fee requirements that may apply to the permit program as circumstances dictate. One requirement is for an air agency to submit, as required by the EPA, "periodic updates" of the "initial accounting" portion of the fee demonstration to show how "required fee revenues" are used solely to cover the costs of the permit program.[18] Further, an air agency must submit a "detailed accounting" demonstrating that the fee schedule is adequate to cover costs if an air agency changes its fee schedule to collect *less than* the presumptive minimum or if the EPA determines—based on the EPA's own initiative, or based on comments rebutting a presumption of fee sufficiency—that there are serious questions regarding whether the fee schedule is sufficient to cover the costs.[19]

In addition, title V and part 70 provide general authority for the EPA to conduct oversight activities to ensure air agencies adequately administer and enforce the requirements for operating permits programs, including that the requirements for fees are being met on an ongoing basis.[20] One method the EPA uses to perform such oversight is through periodic program or fee evaluations of part 70 programs. As part of such an evaluation, the EPA may carefully review how the state has addressed the fee requirements of part 70 as previously described and work with the air agency to seek improvements or make corrections and adjustments if any fee concerns are uncovered. Also, as part of such an evaluation, the EPA may require "periodic updates" to a fee demonstration or a "detailed accounting" that fees are sufficient to cover permit program costs.[21] See the EPA's separate *Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70* ("title V evaluation guidance") for more on this subject.[22]

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[13] *See* 40 CFR § 70.9(b).
[14] *See* 40 CFR § 70.9(d).
[15] *See* 40 CFR § 70.9(c).
[16] *See* Sections 1.1 and 3.2 of the fee demonstration guidance.
[17] *See* 40 CFR § 70.9(d).
[18] *See* 40 CFR § 70.9(d).
[19] *See* 40 CFR § 70.9(b)(5); fee demonstration guidance, Section 2.0 (providing an example of a "detailed accounting"). The scope and content of a "detailed accounting" may vary but will generally involve information on program fees and costs and other accounting procedures and practices that will show how the air agency's fee schedule will be sufficient to cover all program costs.
[20] *See* CAA § 502(i); 40 CFR § 70.10(b).
[21] *See* 40 CFR §§ 70.9(a); 70.9(b)(1), (5)(ii).
[22] *Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70*, Peter Tsirigotis, Director, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018.

IIa Types of Costs and Activities Included in Title V Costsa

A.a Overviewa

Activities that count as part 70 costs (direct and indirect costs of part 70).tPart 70 uses the term "permit program costs" to describe the costs that must count for fee purposes under part 70.[23] This term is defined in 40 CFR § 70.2 as "all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in [40 CFR § 70.9(b)] (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration)." At a minimum, any air program activity performed by an air agency under title V or part 70 must be included in program costs. Many of the activities required under title V or part 70 are described in Sections II.B through II.K of this guidance.

As described above, part 70 costs must include all "reasonable direct and indirect costs"[24] that are incurred by air agencies intthe development, implementation, and enforcement of the part 70 program. "Direct costs" are expenses that can be directly attributed to part 70 program activities or services. "Direct costs" can generally be subdivided into two categories: "direct labor costs" and "other direct costs." The term "direct labor costs" refers to salary and wages for direct work on part 70, including fringe benefits. The term "other direct costs" refers to other direct part 70 expenses, such as materials, equipment, professional services, official travel (e.g., transportation, food and lodging), public notices, public hearings, and contracted services. "Indirect costs" are costs for "general administration" or "overhead" that are not directly attributable to a part 70 program because they benefit multiple programs or cost objectives, but they are needed to operate a part 70 program. "Indirect costs" for a part 70 program are typically determined based on an indirect rate or a proportional share of the expenses of a larger organization. Examples of "indirect costs" include, but are not limited to, costs for utilities, rent, general administrative support, data processing charges, training and staff development, budget and accounting support, supplies and postage.

Intaddition, note that air agency accounting practices vary in how they nominally categorize costs as "direct costs," "indirect costs," or "other direct costs," depending on the specific nature of the activity. An example would be training costs, which are typically treated as "indirect costs" but sometimes ast "direct costs," particularly where the training istabout part 70 (e.g., for permit staff development). While accounting practices and terminology may vary among air agencies, the important principle to remember is that all reasonable direct and indirect costs of the program must be represented in the costs reported to the EPA, regardless of how the costs are categorized by the air agency.

Part 70 and the 1993 fee schedule guidance describe the part 70 activities of "reviewing and acting on any application for a part 70 permit"[25] and "implementing and enforcing the terms of anytpart 70t

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[23] See 40 CFR § 70.9(a).

[24] The phrases, "reasonable direct and indirect costs" and "reasonable (direct and indirect) costs" have the same meaning. The phrase "reasonable direct and indirect costs" was initially used by the EPA in the 1993 fee schedule guidance, page 1. The phrase "reasonable (direct and indirect) costs" is also found in CAA section 502(b)(3)(A), (C)(iii).

[25] The response to comments document for the part 70 final rule clarifies that the phrase "acting on permit applications" in section 503(c) of the Act means the act of issuing or denying a permit, not just beginning review of a permit application. *See* Technical Support Document for Title V Operating Permits Programs (May 1992) at page 4-4, EPA Docket No. EPA-HQ-OAR-2004-0288; Legacy Docket No. A-90-33.

permit," and these activities must be included in part 70 costs.[26] The following paragraphs use these phrases to clarify the extent that certain activities performed by the air agency must be included in part 70 costs. The phrase "reviewing and acting on any application for a part 70 permit" refers to all activities related to processing the permit application and issuing (or denying) the final part 70 permit, while the phrase "implementing and enforcing the terms of any part 70 permit" refers to all activities necessary to administer and enforce final part 70 permits, prior to the filing of an administrative or judicial complaint or order.[27]

Also, the following paragraphs clarify the extent to which fees must fund the costs of "permit programs under provisions of the Act other than title V" (hereafter referred to as "other permits") (e.g., preconstruction review permits) and "activities which relate to provisions of the Act in addition to title V" (hereafter referred to as "other activities") (e.g., a requirement for an air agency to develop a case-by-case emissions standard for an existing source).[28]

Costs related to "other permits."[29] The costs of "implementing and enforcing" the terms of a part 70 permit must be treated as a part 70 cost.[30] Thus, part 70 costs must include the cost of implementing and enforcing any term or condition of a non-part 70 permit required under the Act[31] that is incorporated into a part 70 permit and meets the definition of "applicable requirement"[32] in part 70. Similarly, the cost of implementing and enforcing any term or condition of a consent decree or order that originates in a non-part 70 permit that has been incorporated into a part 70 permit must be included as a part 70 cost.[33]

The costs of implementing and enforcing "applicable requirements" from a non-part 70 permit that will go into a part 70 permit in the future may be counted as part 70 costs. However, once a source has

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[26] The phrases "reviewing and acting on any application for a part 70 permit" and "implementing and enforcing the terms of any part 70 permit" are found at 40 CFR § 70.9(b)(1)(ii) and (iv). Similar phrases are found in the EPA's 1993 fee schedule guidance at page 3 and the phrases in the guidance have the same meaning as the phrases in part 70. *See also*, CAA § 502(b)(3)(A).

[27] An EPA memo, *Matrix of Title V-Related and Air Grant-Eligible Activities*, OAQPS, U.S. EPA, September 23, 1993 (the "matrix guidance"), page 8, which clarifies that enforcement costs are counted for part 70 purposes prior to the filing ofta complaint or order. *See* page 8.

[28] The phrases cited here were originally discussed on pages 2 and 3 of the cover memorandum for the 1993 fee schedule guidance.

[29] Note that the EPA's 1993 fee schedule guidance contains the statement that "the costs of reviewing and acting on applications for permits required under Act provisions other than title V *need not* be recouped by title V fee." This statement has been interpreted by some to mean that the costs of non-title V permits "are not needed" or "may *optionally*" be counted in title V costs.

[30] *See* 40 CFR § 70.9(b)(1)(iv).

[31] Examples of non-part 70 permits required under the Act may include "minor new source review" (minor NSR) permits, "synthetic minor" permits, Prevention of Significant Deterioration (PSD) permits, and Nonattainment NSR permits authorized under title I of the Act.

[32] "Applicable requirements" are the air quality requirements that must be included in part 70 permits. See the definition of "applicable requirement" in 40 CFR § 70.2, which includes "any terms and conditions of any preconstruction permits issuedt pursuant to any regulations [under title I]," and certain requirements under titles I, III, IV and VI of the Act.t

[33] The EPA has previously explained that consent decrees and orders reflect the conclusion of a judicial or administrative process resulting from the enforcement oft"applicable requirements," and, because of this, all CAA-related requirements in such consent decrees and orders "are appropriately treated as 'applicable requirements' and must be included in title V permits. . ." *See In the Matter of Citgo Refining and Chemicals Company, L.P.*, Order on Petition Number VI-2007-01, at 12 (May 28, 2009).

submitted a timely and complete part 70 application and paid part 70 fees, all costs of implementing and enforcing the non-part 70 permit must be counted as part 70 costs.[34]

Also, any implementation and enforcement activities related to a requirement that is incorporated into a part 70 permit that is not "federally enforceable" and would not meet the definition of an "applicable requirement" (e.g., a "state-only" requirement) need not be treated as a part 70 cost.[35] The matrixt guidance also clarifies that state-only requirements are air grant-eligible activities, rather than title V-eligible activities.

<u>Costs of performing certain other activities related to applicable requirements.</u>t Certain activities required by the Act or its implementing regulations are not "applicable requirements" as defined in part 70 because they apply to the permitting authority rather than the source.[36] We refer to such activities ast "other activities." As such, questions often arise as to whether the costs of "other activities" are part 70 costs, costs of the underlying standard, or costs of the preconstruction review permitting process.

Examples of applicable requirements associated with "other activities" include, but are not limited to, the following:

- Emissions standards or other requirements for new sources under section 111(b) of the Act;t
- Emissions standards or other requirements for existing sources under section 111(d) of the Act;t
- Case-by-case maximum achievable control technology (MACT) standards that may be required under section 112 of the Act; andt
- Activities required by a state, federal, or tribal implementation plan (SIP, FIP, or TIP), includingt section 110 of the Act.t

The 1993 fee schedule guidance stated that the cost for performing "other activities" would be part 70 costs only to the extent the activities are "necessary for part 70 purposes."[37] The 1993 fee schedulet guidance has resulted in numerous questions over the years as to the scope of the term "part 70 purposes." The EPA believes a clearer standard for determining when "other activities" must be included in part 70 costs would include an evaluation of: the extent to which the air agency is required to perform the "other activities" pursuant to part 70, title V, or the approved part 70 program; the extent to which the activity is performed to assure compliance with, or enforce, part 70 permit terms and conditions; or the extent to which a non-part 70 rule (e.g., a section 111 or 112 standard) requires the air agency to perform the activity in the part 70 permitting context. If an "other activity" does not meet any

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[34] *See* EPA memo, *Additional Guidance on Funding Support for State and Local Programs*, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, to Regional Administrators, Regions I–X, August 28, 1994.
[35] *See* 40 CFR § 70.6(b)(2).
[36] Although the "other activities" may originate within a federal standard or requirement that we generally refer to as an "applicable requirement" and the activities may result in an "applicable requirement," the activities themselves do not meet the definition of "applicable requirement" within 40 CFR § 70.2.
[37] See page 2 of the introductory memorandum for the 1993 fee schedule guidance.

of these criteria (e.g., a non-part 70 rule requires an activity in a non-part 70 context), it should not be included in part 70 costs.

Nonetheless, if any activity is an "applicable requirement" for a source, the applicable requirement must be included in a part 70 permit and the costs to the air agency of including it in the permit (and implementing and enforcing) must be treated as part 70 costs.[38]

For example, the cost of *incorporating* a standard (e.g., a section 111(b) standard) into a part 70 permit—where the task is merely one of copying the requirements from the regulation unchanged into a permit—would be a part 70 cost. However, the cost of *developing* a source-specific emission limitation outside the permit processing context (e.g., a standard pursuant to section 111(d) emission guidelines) would be a section 111 cost (although the cost of subsequently incorporating that standard into the part 70 permit would be a part 70 cost).

The costs of "other activities" related to implementation plans, including section 110 or 111 of the Act, should not be counted for part 70 purposes if the activities are required as part of the preconstruction review process or directly relate to implementation plan development, as required by title I of the Act.[39] On the other hand, part 70 costs can include ambient monitoring or emission inventories necessary to implement the part 70 program (e.g., development and quality assurance of emissions inventory for potential part 70 sources for the purpose of determining applicability).[40] If an air agency is unsure where to draw the line on including such activities in part 70 costs, they should contact the EPA for assistance.

General standard for EPA review of part 70 costs for a particular air agency. In general, the EPA expects that part 70 permit fees will fund the activities listed in this guidance. However, in evaluating a part 70 program, the EPA will consider the particular design and attributes of that program. Because the nature of permitting-related activities can vary across air agencies, the EPA evaluates each program individually. The activities listed in this guidance may not represent the full range of activities to be covered by permit fees.[41] Additionally, some air agencies may have further program needs based on the particularities of their own air quality issues and program structure.

Sections II.B through II.K of this guidance provide further information on specific permitting activities and the extent to which the costs of such activities must be treated as part 70 costs.

B. The Costs of Part 70 Program Administration

All part 70 program administration costs must be treated as part 70 costs.[42] Examples of program administration costs include:

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[38] *See* § 70.9(b)(1)(ii), (4).
[39] Implementation plan development is mandated under title I of the Act and costs typically include such activities as maintaining state-wide emissions inventories and performing ambient monitoring and emissions modeling of air pollutants for which national ambient air quality standards have been set.
[40] *See* the matrix guidance at page 1.
[41] The fee demonstration guidance cites various factors that may affect the types of activities included in a permit program and influence costs. *See* fee demonstration guidance at 4-5.
[42] This section includes many activities that would be categorized as part 70 costs under 40 CFR §§ 70.9(b)(1)(i)-(iii) that are not covered elsewhere in subsequent sections of this guidance and are necessary to conduct a part 70 program.

- Program infrastructure costs (e.g., development of part 70 regulations, implementation guidance, policies, procedures, and forms);

- Program integration costs (adapting to changes in related programs, such as NSR, section 112 programs, and other programs);

- Data system implementation costs (including data systems for submitting permitting information to the EPA, for permit program administration, implementation and tracking and to provide public access to permits or permit information);

- Costs to operate local or Regional offices for part 70, the costs of interfacing with other state, local, or tribal offices (e.g., briefing legislative or executive staff on program issues and responding to internal audits);

- Costs related to interfacing with the EPA (e.g., related to program oversight, including program evaluations, responding to public petitions, revising implementation agreements between the air agency and the EPA); and

- Activities similar to those above.

In addition, there are other program implementation costs, such as the costs of making determinations of which sources are subject to part 70 permitting requirements that must be treated as part 70 costs.[43] Examples of such activities include:

- Maintaining an inventory of part 70 sources (e.g., for enforcement of the requirement for sources to obtain a permit or for part 70 fee purposes);

- Costs of determining if an individual source is a major source (for applicability purposes);

- Costs of determining if a source qualifies for coverage under a general permit (if the air agency chooses to issue them); and

- Costs of determining if a non-major source is required to obtain a part 70 permit and costs of implementing any insignificant activity and emission level exemptions under part 70.

C. The Costs of Part 70 Program Revisions

All costs of revising an approved part 70 program must be treated as part 70 costs, including the costs of developing new program elements to respond to changes in requirements, whether the revisions are the air agency's own initiative or required by the EPA.[44] Examples of program revision costs include:

- Costs of revising the program elements that are changing (e.g., program legal authority, implementing regulations, data systems, and other program elements);

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[43] Many of these activities may also be described as related to reviewing and acting on applications for part 70 permits, as provided in 40 CFR § 70.9(b)(l)(ii).
[44] *See* 40 CFR § 70.4(i).

- Costs of documenting the changes; and
- Costs associated with obtaining the needed approvals, including for submitting program revisions to the EPA and any necessary follow-up work related to obtaining approval.

D. The Costs of Reviewing Applications and Acting on Part 70 Permits

All costs of reviewing an application for a part 70 permit, developing applicable requirements as part of the process of a permit, and ultimately acting upon the application must be treated as part 70 costs.[45] These costs must include the costs of the application completeness determination, the technical review of the application (including the review of any supplemental monitoring that may be needed, review of any compliance plans, compliance schedules, and review of initial compliance certifications included in the application), drafting permit terms and conditions to reflect the applicable requirements that apply to the source, determining if any permit shields apply, public participation, the EPA and affected air agency review, and issuing the permit. The cost of these activities must be included for initial permit processing, permit renewal, permit reopening, and permit modification.

The costs of developing part 70 permit terms and conditions. All costs associated with the development of permit terms and conditions to reflect the "applicable requirements," including the costs of incorporating such terms in part 70 permits, must be treated as part 70 costs. The applicable requirements include the emissions limitations and standards and other requirements as provided for in the definition of applicable requirements in 40 CFR § 70.2. Such costs may include the costs to determine the provisions of the applicable requirements that specifically apply to the source, to develop operational flexibility provisions, netting/trading conditions, and appropriate compliance conditions (e.g., inspection and entry, monitoring and reporting). Appropriate compliance provisions may include periodic monitoring and testing under 40 CFR § 70.6(a)(3)(i)(B) and monitoring sufficient to assure compliance under 40 CFR § 70.6(c)(1).

Part 70 also requires certain regulatory provisions to be included in permits, such as citation to the origin and authority of each permit term, a statement of permit duration, requirements related to fee payment, certain part 70 compliance and reporting requirements, a permit shield (if provided by the air agency), and similar terms. The costs of developing such terms must be covered by permit fees.[46]

The costs of developing "state-only" permit terms need not be treated as part 70 costs. Air agencies should screen or separate "state-only" requirements from federally-enforceable requirements and—while the act of separating part 70 terms from state-only terms should be treated as part 70 costs—the costs of developing state-only permit terms, putting them in the part 70 permit, and implementing and enforcing them as they appear in the part 70 permit need not be treated as part 70 costs for fee purposes.[47]

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[45] *See* CAA section 502(b)(3)(A)(i); 40 CFR § 70.9(b)(1)(ii).
[46] *See* 40 CFR § 70.6.
[47] *See* the matrix guidance, which notes that state-only requirements in part 70 permits are air-grant-eligible activities, rather than title V-eligible activities.

The costs of public participation and review (by the EPA and the affected air agency). All costs of notices (or transmitting information) to the public, affected air agencies and the EPA for part 70 permit issuance, renewal, significant modifications and (if required by state or local law) for minor modifications (including staff time and publication costs) must be treated as part 70 costs.[48]

Any costs associated with hearings for part 70 permit issuance, renewal, significant modifications, and for minor modifications (if required by state or local law), including preparation, administration, response, and documentation, must be treated as part 70 costs.

All costs for the air agency to develop and provide a response to public comments received during the public comment period must be treated as part 70 costs.

Any costs associated with transmitting necessary documentation to the EPA for review and response to an EPA objection must be treated as part 70 costs.[49] Also, the costs associated with an air agency's response to an EPA order granting objection to a part 70 permit and/or the costs of defending challenges to part 70 permit terms in state court must be treated as part 70 costs.

E. The Costs of Implementation and Enforcement of Part 70 Permits

With some exceptions related to court costs and enforcement actions, the costs of implementing and enforcing the terms of any part 70 permit must be treated as part 70 program costs.[50] Implementation and enforcement of permit terms and conditions related to part 70 includes requirements for compliance plans, schedules of compliance, monitoring reports, deviation reports, and annual certifications.

The costs of any follow-up activities when compliance/enforcement issues are encountered should be treated as part 70 costs. Part 70 costs include such activities as conducting site visits, stack tests, inspections, audits, and requests for information either before or after a violation is identified (e.g., requests similar to the EPA's CAA section 114 letters).

Part 70 costs should include the costs for any notices, findings, and letters of violation, and the development of cases and referrals up until the filing of the complaint or order. Excluded from permit costs are enforcement costs incurred after the filing of an administrative or judicial complaint.[51]

Part 70 costs must also include the costs of implementing and enforcing any restrictions on potential to emit (PTE) that are included in a part 70 permit, whether they originate in the part 70 permit or were transferred from a non-part 70 permit, such as a minor NSR permit for a "synthetic minor source."

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[48] *See* 40 CFR § 70.7(h) concerning public participation and 40 CFR § 70.8 concerning the EPA and affected air agency review.
[49] *See* 40 CFR § 70.8(a).
[50] *See* 40 CFR §§ 70.4(b), 70.6, 70.9(b)(1)(iv), and 70.11.
[51] *See* the matrix guidance at page 8.

F.a The Costs of Implementing and Enforcing the Requirements of Non-Title V Permits Requireda Under the Acta

Part 70 fees must cover the costs of implementing and enforcing the terms and conditions of "other permits" (non-part 70 permits) required under the Act, such as preconstruction review permits under title I, that have been incorporated in part 70 permits as "applicable requirements."[52]

Also, the costs of implementing and enforcing the terms and conditions of consent decrees and orders that originate in a non-part 70 permit that are incorporated into a part 70 permit must be treated as part 70 costs. *See* Section II.A of this guidance.

The costs of implementing and enforcing applicable requirements for "prospective part 70 sources" need not be treated as part 70 costs until such time as the source submits a timely and complete permit application and pays fees. In addition, the costs of implementing and enforcing "state-only" requirements need not be treated as part 70 costs.

G.a The Costs of Performing Certain "Other Activities" Related to Applicable Requirementsa

Certain activities are required by the Act but are not "applicable requirements" because they apply to the permitting authority, rather than the source; such activities are referred to as "other activities."[53] Examples of applicable requirements that contain these activities include, but are not limited to, standards for existing sources under section 111(d) of the Act; case-by-case MACT under sections 112 of the Act; and certain activities required by a SIP, FIP, or TIP, including section 110 of the Act. The costs of other activities must be treated as part 70 costs, if the air agency is required to perform the activities by part 70, title V, or the air agency's approved part 70 program; if a non-part 70 rule requires them to be performed in the part 70 permitting context; or if the activities are needed to assure compliance with, or to enforce, the terms and conditions of a part 70 permit. The costs of other activities should not be treated as part 70 costs, if they do not meet any of these criteria (e.g., a non-part 70 rule requires an activity that occurs in a non-part 70 context). *See* Section II.A of this guidance.

H.a The Costs of Revising, Reopening, and Renewing Part 70 Permitsa

All costs associated with processing permit revisions, including for administrative amendments, minor modifications (fast-track and group processing)t, and significant modifications, must be treated as part 70 costs.[54] The part 70 costs must include all the costs of reviewing and acting on the application, as well as implementing and enforcing the revised permit terms.[55] The costs of implementing any "operationalt flexibility provisions"[56] approved into a program to streamline permit revision procedures must bet treated as permit program costs (this may also generally be considered to be one of the costs of implementing a permit).

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[52] Required to be treated as part 70 costs in certain cases by 40 CFR § 70.9(b)(1)(iv).t

[53] Required to be treated as part 70 costs in certain cases by 40 CFR §§ 70.9(b)(1)(ii) and (iv).

[54] Required to be treated as part 70 costs under 40 CFR § 70.9(b)(1)(ii). Also *see* 40 CFR § 70.7 for more on permit issuance, renewal, reopening and revision procedures.

[55] 40 CFR §§ 70.9(b)(1)(ii) and (iv).t

[56] Section 502(b)(10) of the Act requires the operating permit regulations to include provisions to allow changes within a permitted facility without requiring a permit revision under certain circumstances. The EPA refers to these provisions as "operational flexibility provisions." *See* 40 CFR § 70.4(b)(12).

The cost for the air agency to reopen a part 70 permit for cause must be treated as part 70 costs. The proceedings to reopen a permit shall follow the same procedures that apply to initial permit issuance, and include a requirement for the air agency to provide a notice to the source of the agency's intent to reopen the permit.

When the EPA reopens a part 70 permit for cause, the air agency's costs for the proposed determination of termination, modification, or revocation and reissuance, and the costs to resolve the objection in accordance with the EPA's objection, must be treated as part 70 costs.

The cost of renewing permits every 5 years, which involves the same procedural requirements, including public participation, and the EPA and affected air agency review, must be treated as part 70 costs, [57] justt as for initial permit issuance.

I. The Costs of General and Model Permitsa

All costs for development and implementation of general and model permits under part 70 must be included in part 70 program costs, including the costs of drafting permits, public participation, the EPA review and any affected air agency's review, permit issuance, publication, assessing applications for coverage under the general permit, and other related costs.[58] Note that the issuance of general and model permits is an option for air agencies, but if such permits are issued by an air agency under part 70, the costs must be included in part 70 costs.

J.a The Costs of the Portion of the Small Business Assistance Program (SBAP) Attributable to Part 70 Sourcesa

The SBAP under title V is authorized to provide counseling to help small business stationary sources to determine and meet their obligations under the Act.[59] The SBAP is authorized to provide assistance to small business stationary sources, as defined by CAAt§ 507(c)(1), under the preconstruction and operating permit programs; however, air agencies need only to include costs related to assistance with part 70 in part 70 costs.[60] *See* 40 CFR § 70.9(b)(1)(viii). Allowable costs for part 70 include the costs to establish a small business ombudsman program to provide information on the applicability of part 70 to sources, available assistance for part 70 sources, the rights and obligations of part 70 sources, and options for sources subject to part 70. Allowable costs also include the costs associated with part 70 applicability determinations.

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[57] 40 CFR § 70.9(b)(1)(ii).

[58] Required to be included in part 70 costs by 40 CFR §§ 70.9(b)(1)(ii) and (iv). Also *see* 40 CFR § 70.6(d) for more on the administration of general permits.

[59] For examples of the types of activities of a SBAP that could be attributable to part 70 sources and funded by part 70 fees, see *Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants,* Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, to Regional Administrators, Regions I – X, July 21, 1994 ("transition guidance"); Letter from Conrad Simon, Director, Air & Waste Management Division, EPA Region II to Mr. Billy J. Sexton, Director, Jefferson County Department of Planning and Environmental Management, Air Pollution Control District, Louisville, Kentucky, January 23, 1996 ("Sexton memo").

[60] Note that the preconstruction review permitting costs of assisting non-part 70 sources should generally not be included as part 70 costs, except for costs related to implementation and enforcement of permit terms from a preconstruction review permit that have been included in a part 70 permit.

Part 70 costs for SBAP must include the costs for outreach/publications on the requirements of part 70 and/or the applicable requirements included in part 70 permits, the costs of assisting part 70 sources through a clearinghouse on compliance methods and technologies, including pollution prevention approaches, and the costs to assist sources with part 70 permitting, which may include the portion of costs for a small business compliance advisory panel that are related to part 70.

K. The Costs of Permit Fee Program Administration

All costs associated with the administration of an air agency's part 70 fee program must be included in part 70 costs, including the costs for revising fee schedules (as needed to cover all required costs), periodic updates, detailed accounting (if needed), determining the presumptive minimum for the air agency, participating in EPA evaluations of fee programs or similar EPA oversight activities, assisting sources with fee issues, auditing fee payment by sources, assessing penalties for fee payment errors, responding to internal audits and inquiries, and similar activities.[61]

III. Flexibility in Fee Schedule Design

An air agency may design its fee schedule to collect fees from sources using various methods, provided the fee structure raises sufficient revenue to cover all required program costs.[62] Thus, air agencies may charge: emissions-based fees based on actual emissions or allowable emissions; fixed fees for certain permit processes (different fees for initial permit review, renewals, or for various types of permit revisions); different fee rates (e.g., dollars per ton of emissions) for certain air pollutants; fees reflecting the actual costs of services for sources (such as charging for time and materials for a review); or other types of fees, including any combination of such fees. Finally, air agencies may charge annual fees or fees covering some other period of time.

This flexibility for fee schedule design is available without regard to whether the air agency has set its fees to collect above or below the presumptive minimum. Many air agencies have designed their fee schedules to collect fees using an emissions-based approach that mirrors the approach of part 70 for determining the presumptive minimum program cost for an air agency.[63] However, air agencies are not required to charge fees to sources in that manner, and it is possible that such an approach may not necessarily result in fees that would be sufficient to cover all part 70 program costs.

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[61] *See* 40 CFR § 70.9(b)(1)(ii); *Overview of Clean Air Title V Financial Management and Reporting – A Handbook for Financial Managers*, Environment Finance Center, University of Maryland, Maryland Sea Grant College, University of Maryland. Supported by a grant from the U.S. EPA, January 1997 ("Financial Manager's Handbook") (providing an overview of air agency application of general government accounting, budgeting, and financial reporting concepts to the part 70 program).

[62] *See* 40 CFR § 70.9(b)(3).

[63] *See* 40 CFR § 70.9(b)(2)(i).

IV. The EPA Review of Existing Air Agency Fee Programs

The initial program submittals involved review of data on expected fee revenue, program costs and accounting practices that were prospective in nature, since little or no data would have been available on actual fees or costs at that time.

At this point, the EPA review of air agency fee programs generally focuses on a review of actual data on fee revenue, program costs, and review of existing accounting practices. The EPA oversight of existing fee programs will also likely be conducted as part of a program evaluation, a separate fee evaluation, or through submittal of any periodic updates or detailed accountings related to fee demonstration requirements. The EPA has issued a separate memorandum and guidance on part 70 program and fee evaluations concurrently with this updated fee schedule guidance.[64]

Fee evaluations for existing part 70 programs will generally focus on certain key requirements of the Act and part 70 for fees discussed in Section I, *General Principles for Review of Title V Fee Schedules*, of this guidance. Such reviews may cover certain aspects of air agency accounting practices and procedures related to fees, particularly fee assessment procedures, tracking of fee collection and revenue uses (including transfers in and out of part 70 program accounts), whether all part 70 costs are included in the air agency's accounting of costs, and potentially other accounting aspects.

A fee evaluation may include a review of an air agency's fee program status with respect to the presumptive minimum defined in 40 CFR § 70.9(b)(2). This may be important in cases where a part 70 program was initially approved to charge above the presumptive minimum, in order to determine if the air agency is now charging less than the presumptive minimum. This is relevant because 40 CFR § 70.9(b)(5)(i) requires an air agency to submit a detailed accounting to show that its fees would be adequate to cover the program costs if the air agency charges less than the presumptive minimum. This requirement is ongoing (not restricted to program submittals).

In addition, the EPA revised the part 70 requirements related to calculating the presumptive minimum to add a "GHG cost adjustment" in an October 23, 2015, final rule.[65] Although the EPA has announced a review of this final rule (82 FR 16330, April 4, 2017), the EPA has not proposed any specific changes to the "GHG cost adjustment." Because air agencies are required to collect sufficient fees to cover the costs of implementing their operating permit programs, they may still use the "GHG cost adjustment" (as applicable) in calculating the fees owed to reflect the associated administrative burden of considering GHGs in the permitting process. The "GHG cost adjustment" is designed to cover the overall added administrative burden of adding GHGs to the permitting program in a general sense.

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[64] *Program and Fee Evaluation Strategy and Guidance for Part 70*, Peter Tsirigotis, Director, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018.

[65] The "GHG cost adjustment" was promulgated as part of an October 23, 2015, final rule titled, *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units*, 80 FR 64510. Specifically, see Section XII.E. "Implications for Title V Fee Requirements for GHGs" at page 64633. *See also* 40 CFR §§ 70.9(b)(2)(v) and (d)(3)(viii).

"Presumptive Minimum" Calculation

1. **Calculate the "Cost of Emissions."** The calculation is based on multiplying the actual emissions of "fee pollutants"[66] (tons) from the air agency's part 70 sources for a preceding 12-month period by the "presumptive minimum fee rate"[67] ($/ton) that is in effect at the time the calculation is performed.

   Air agencies may exclude the following types of fee pollutants from the calculation:
   - Actual emissions of each regulated fee pollutant in excess of 4,000 tons per year on source-by-source basis.[68]
   - Actual emissions of any regulated fee pollutant emitted by a part 70 source that wast already included in the presumptive minimum fee calculation (i.e., double-counting of the same pollutant is not required).[69]
   - Insignificant quantities of actual emissions not required in a permit application pursuantt to 40 CFR § 70.5(c).[70]

2. **Calculate the "GHG Cost Adjustment" (as applicable)**[71] The "GHG cost adjustment" is thet cost for the air agency to conduct certain application reviews (activities) to determine if GHGs have been properly addressed for an annual period. The adjustment is calculated by multiplyingt the total hours to conduct the activities (burden hours) by the average cost of staff time ($/hour)t to conduct the activities.t

   To calculate the total hours for the air agency to conduct the activities, multiply the number of activities performed in each category listed in the following table by the corresponding "burden hours per activity factor," and sum the results.[72]

Table 1. GHG reviews counted for GHG cost adjustment purposes

Activity	Burden Hours per Activity Factor
GHG completeness determination (for initial permit or updated application)	43
GHG evaluation for a permit modification or related permit action	7
GHG evaluation at permit renewal	10

[66] The term "fee pollutants" used here is shorthand for "regulated pollutants (for presumptive fee calculation)," as defined in 40 CFR § 70.2.

[67] The "presumptive minimum fee rate" is calculated by the EPA in September of each year and is effective from September 1 to August 31 of the following year. The fee rate is adjusted annually for changes in the Consumer Price Index (CPI) and is published on the following Internet site: *https://www.epa.gov/title-v-operating-permits/permit-fees.*

[68] *See* 40 CFR § 70.9(b)(2)(ii)(B).

[69] *See* 40 CFR § 70.9(b)(2)(ii)(C). For example, a source may emit an air pollutant that is defined as both a hazardous air pollutant and a pollutant for which a national ambient air quality standard has been established, e.g., a volatile organic compound. The actual emissions of such a pollutant is not required to be counted twice for fee purposes.

[70] *See* 40 CFR § 70.9(b)(2)(ii)(D).

[71] *See* 40 CFR §§ 70.9(b)(2)(i) and (v).

[72] The table shown here is found at 40 CFR § 70.9(b)(2)(v).

To determine the GHG cost adjustmentt($), the total hours to conduct the reviews (calculated above) is multiplied by the average cost of staff time ($/hour). The average cost of staff time must include wages, employee benefits, and overhead and will be unique to the air agency. The average cost may be known for the air program or may be available from the air agency budget office or accounting staff.

3.t **Calculate the Total Presumptive Minimum.** The total presumptive minimumt($) for the annualt period is determined by adding the "cost of emissions" (determined in Step 1) and the "GHGt cost adjustment," as applicable (determined in Step 2).t

See Attachment B, *Example Presumptive Minimum Calculation*, for an example calculation for a hypothetical air agency that incorporates the "GHG cost adjustment."

V. Future Adjustments to Fee Schedules

Air agencies must collect part 70 fees that are sufficient to cover the part 70 permit program costs.[73] Accordingly, air agencies may need to revise fee schedules periodically to remain in compliance with the requirement that permit fees cover all part 70 permit program costs. Changes in costs over time may be due to many factors, including but not limited to: changes in the number of sources required to obtain part 70 permits; changes in the types of permitting actions being performed; promulgation of new emission standards; and minor source permitting requirements for CAA sections 111, 112, or 129 standards. Air agencies should keep the EPA Regions apprised of any changes to fee schedules over time. The EPA will assess the proposed revision and determine whether it must be processed by the EPA as a substantial or non-substantial revision. As part of this process, the EPA may request additional information, as appropriate.

[73] 40 CFR § 70.9(a).

ATTACHMENT A

List of Guidance Relevant to Part 70 Fee Requirements

EPA Guidance on Part 70 Requirements:

- January 1992 – *Guidelines for Implementation of Section 507 of the Clean Air Act Amendments – Final Guidelines,* Office of Air Quality Planning and Standards (OAQPS), U.S. EPA. *See* pages 5 and 11-12 concerning fee flexibility for small business stationary sources: *htt'p://www.epa.gov/sites/production/files/2015-08/documents/smbus.pdf*

- July 7, 1993 – *Questions and Answers on the Requirements of Operating Permits Program Regulations*, U.S. EPA. See Section 9: *http://www.epa.gov/sites/production/files/2015-08/documents/bbrd_qa1.pdf*

- August 4, 1993 – *Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs under Title V*, John S. Seitz, Director, OAQPS, U.S. EPA, to Air Division Directors, Regions I-X ("1993 fee schedule guidance"). Note that there was an earlier document on this subject that was superseded by this document: *http://www3.epa.gov/ttn/naaqs/aqmguide/collection/it5/fees.pdf*

- August 9, 1993 – *Acid Rain Title V Guidance on Fees and Incorporation by Reference,* Brian J. McLean, Director, Acid Rain Division, U.S. EPA, to Air, Pesticides, and Toxics Division Directors, Regions I, IV, and VI, Air and Waste Management Division Director, Region II, Air and Toxics Division Directors, Regions III, VII, VIII, IX and X and Air and Radiation Division Director, Region V: *http://www.epa.gov/sites/production/files/2015-08/documents/combo809.pdf*

- September 23, 1993 – *Matrix of Title V-Related and Air Grant Eligible Activities*, OAQPS, U.S. EPA ("matrix guidance"). The matrix notes that it is to be "read and used in concert with the August 4, 1993, fee [schedule] guidance": *http://www.epa.gov/sites/production/files/2015-08/documents/matrix.pdf*

- October 22, 1993 – *Use of Clean Air Act Title V Permit Fees as Match for Section 105 Grants* Gerald M. Yamada, Acting General Counsel, U.S. EPA, to Michael H. Shapiro, Acting Administrator, Office of Air and Radiation, U.S. EPA: *htt'ps://www.epa.gov/sites/production/files/2015-08/documents/usefees.pdf*

- November 01, 1993 – *Title V Fee Demonstration and Additional Fee Demonstration Guidance.* John S. Seitz, Director, OAQPS, U.S. EPA, to Director, Air, Pesticides and Toxics Management Division, Regions I and IV, Director, Air and Waste Management Division, Region II, Director, Air, Radiation and Toxics Division, Region III, Director, Air and Radiation Division, Region V, Director, Air, Pesticides and Toxics Division, Region VI and Director, Air and Toxics Division, Regions VII, VIII, IX and X, U.S. EPA ("fee demonstration guidance"): *http://www3.epa.gov/ttn/naaqs/aqmguide/collection/it5/feedemon.pdf*

- July 21, 1994 – *Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants,* Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, to Regional Administrators, Regions I – X ("transition guidance"): *http://www.epa.gov/sites/production/files/2015-08/documents/grantmem.pdf.*

- August 28, 1994 – *Additional Guidance on Funding Support for State and Local Programs*, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, to Regional Administrators, Regions I – X ("additional guidance memo"): *http://www.epa.gov/sites/production/files/2015-08/documents/guidline.pdf.*

- January 25, 1995 – *Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)*, John S. Seitz, Director for Office of Air Quality Planning and Standards, U.S. EPA, to Regional Directors, Regions I – X: *https://www.epa.gov/sites/production/files/documents/limit-pte-rpt.pdf.*

- January 23, 1996 – Letter from Conrad Simon, Director, Air & Waste Management Division, EPA Region II to Mr. Billy J. Sexton, Director, Jefferson County Department of Planning and Environmental Management, Air Pollution Control District, Louisville, Kentucky ("Sexton memo"): *https://www.epa.gov/sites/production/files/2016-04/documents/sexton_1996.pdf.*

- January 1997 – *Overview of Clean Air Title V Financial Management and Reporting – A Handbook for Financial Managers*, Environment Finance Center, University of Maryland, Maryland Sea Grant College, University of Maryland. Supported by a grant from the U.S. EPA ("financial manager's handbook"): *http://www.epa.gov/sites/production/files/2015-08/documents/t5finance.pdf.*

- October 23, 2015 – *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units: Final Rule* (80 FR 64510). *See* Section XII.E, "Implications for Title V Fee Requirements for GHGs" at page 64633: *http://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf.*

Guidance on Governmental Accounting Standards Relevant to Part 70:

- Handbook of Federal Accounting Standards and Other Pronouncements, as Amended, as of June 30, 2015, Federal Accounting Standards Advisory Board (FASAB). *http://www.fasab.gov/pdffiles/2015_fasab_handbook.pdf.*

- Statement of Federal Financial Accounting Standards 4: *Managerial Cost Accounting Standards and Concepts*, page 396 of the FASB Handbook ("SFFAS No. 4").

- Statement of Federal Financial Accounting Standards 7: Accounting for Revenue and Other Financial Sources and Concepts for Reconciling Budgetary and Financial Accounting, page 592 of the FASAB Handbook ("SFFAS No. 7").

Statements of the Governmental Accounting Standards Board (GASB):

- Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998) ("GASB Statement No. 33"): *http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029148&accepted Disclaimer=true.*

- Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments* (June 1999) ("GASB Statement No. 34"): *http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029121&accepted Disclaimer=true.*

ATTACHMENT B

Example Presumptive Minimum Calculation

This attachment provides an example calculation of the "presumptive minimum" under 40 CFR part 70 for a hypothetical air agency ("Air Agency X").[1]

Background:

- The "presumptive minimum" is an amount of fee revenue for an air agency that is presumed to be adequate to cover part 70 costs.[2]

  - If an air agency's fee schedule would result in fees that would be less than the presumptive minimum, there is no presumption that its fees would be adequate to cover part 70 costs and the air agency is required to submit a "detailed accounting" to show that its fees would be sufficient to cover its part 70 costs.[3]

  - If an air agency's fee schedule would result in fees that would be at least equal to the presumptive minimum, there is a presumption that its fees would be adequate to covert costs and a "detailed accounting" is not required. However, a "detailed accounting" is required whenever the EPA determines, based on comments rebutting the presumption of fee adequacy or on the EPA's own initiative, that there are serious questions regarding whether its fees are sufficient to cover part 70 costs.[4]

- In addition, independent of the air agency's status with respect to the presumptive minimum, a "detailed accounting" is required whenever the EPA determines on its own initiative that there are serious questions regarding whether an air agency's fee schedule is sufficient to cover its part 70 costs. This is required because part 70 requires an air agency's fee revenue to be sufficient to cover part 70 permit program costs.[5]

- The quantity of air pollutants and the "GHG cost adjustment" are unique to each air agency and vary from year-to-year. As a result, the presumptive minimum calculated for an air agency is also unique to that particular agency on a year-to-year basis.

- No source should use the presumptive minimum calculation described in this attachment to calculate its part 70 fees.[6] Sources should instead contact their air agency for more information on how to calculate fees for a source.

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[1] The example calculation follows the requirements of 40 CFR § 70.9(b)(2)(i)-(v).

[2] *See* 40 CFR § 70.9(b)(2)(i).

[3] *See* 40 CFR § 70.9(b)(5) (concerning the "detailed accounting" requirement).

[4] *See* 40 CFR § 70.9(b)(5)(ii).

[5] *See* 40 CFR §§ 70.9(a) and (b)(1).

[6] *See* 40 CFR § 70.9(b)(3) (providing air agencies with flexibility on how they charge fees to individual sources).

- a An air agency may calculate the presumptive minimum in several circumstances:a
  - oa As part of a fee demonstration submitted to the EPA when an air agency sets its feea schedule to collect at or above the presumptive minimum.a
  - oa As part of a fee evaluation to determine if an air agency with a fee schedule originallya approved to be at or above the presumptive minimum now results in fees that are belowa the current presumptive minimum. When this occurs, the air agency is required to submita a "detailed accounting" to show that its fee schedule will be sufficient to cover alla required program costs. Such a change in the presumptive minimum for an air agencya may occur for many reasons over time.[7a]
  - oa To update the presumptive minimum amount for the air agency to account for changesa that have occurred since the calculation was last performed.a A common reason for an aira agency to do this is to recalculate the amount to add the GHG cost adjustment.[8]

The presumptive minimum calculation is generally composed of three steps:

1. *Calculation of the "cost of emissions."* aThe "cost of emissions" is proportional to the emissions of certain air pollutants of part 70 sources.
2. a *Calculation of the "GHG cost adjustment" (as applicable).* The "GHG cost adjustment,"a promulgated in October 23, 2015, is intended to recover the costs of incorporating GHGs into the permitting program.a
3. *Sum the values calculated in Steps 1 and 2.*

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[7] It has been almost two decades since most part 70 programs were approved. Changes may have occurred since then that would affect the presumptive minimum calculation for an air agency. For example, changes in the emissions inventory for part 70 sources or changes to air agency fee schedules. The part 70 rules were also revised in 2015 to add a "GHG cost adjustment" to the calculation of the presumptive minimum fee.

[8] *See* 80 FR 64633 (October 23, 2015); 40 CFR § 70.9(b)(2)(v).

Example Scenario and Calculation:

Air Agency X performs its presumptive minimum calculation in November of 2016 using data for Fiscal Year 2016 (FY16 or October 1, 2015, through September 30, 2016).

Step 1 – Calculate the Cost of Emissions:
The "cost of emissions" is determined by multiplying the air agency's inventory of actual emissions of certain pollutants from part 70 sources ("fee pollutants") by an annual fee rate determined by the EPA.

A.a Determine the Actual Emissions of "Fee Pollutants" for a 12-month Period Prior to thea Calculation.a

Note that the term "fee pollutants" used here is shorthand for "regulated pollutants (for presumptive fee calculation)," a defined term in part 70,[9] which includes air pollutants for which a national ambient air quality standard has been set, hazardous air pollutants, and air pollutants subject to a standard under section 111 of the Act, excluding carbon monoxide, greenhouse gases, and certain other pollutants.[10] Note that any preceding 12-month period may be used, for example, a calendar year, a fiscal year, or any other period that is representative of normal source operation and consistent with the fee schedule used by the air agency.

For example, a review of Air Agency X's emissions inventory records for part 70 sources for the 12-month period (FY16) indicates that the actual emissions of "fee pollutants" were 15,700 tons.t

Total "Fee Pollutants"t= 15,700 tons for FY16

B.a Determine the Presumptive Minimum Fee Rate ($/ton) Effective at the Time thea Calculation is Performed.a

The presumptive minimum fee rate is updated by the EPA annually and is effective from September 1 until August 31 of the following year. Historical and current fee rates are available online: *https://www.epa.gov/title-v-operating-permits/permit-fees.* The fee rate used in the calculation is the one that is effective on the date the calculation is performed, rather than the fee rate in effect for the annual period of the emissions data.

For example, Air Agency X calculates its "presumptive minimum" for FY16 in November 2016. The air agency first refers to the EPA website (listed above) to find the fee rate effective for November 2016. This fee rate ($48.88) is used in the next step to calculate the cost of emissions.

Presumptive Minimum Fee Rate ($/ton) = $ 48.88 per ton.

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[9] The definition of "regulated pollutant (for presumptive fee calculation)" is found at 40 CFR § 70.2.

[10] Note that 40 CFR §§ 70.9(b)(2)(ii) and (iii) provides exclusions for certain air pollutants and includes a definition of "actual emissions."

C.a Calculate the Cost of Emissions.a

Calculate the cost of emissions by multiplying the total tons of "fee pollutants" (value found in A)tby the presumptive minimum fee rate (value found intB).t

Cost of Emissionst= "Fee Pollutants" (tons) * Presumptive Minimum Fee Rate ($/ton)
= 15,700 tonst* $48.88/ton
= $767,416

Value Calculated in Step 1: Cost of Emissionsa= $767,416

<u>Step 2 – Calculate the GHG Cost Adjustment (as applicable):</u>
The "GHG cost adjustment" is the cost for the air agency to review applications for certain permitting actions to determine if GHGs have been properly addressed.

A.a Determine the Number of GHG Activities for Each Activity Category.a

Determine the total number of activities processed during the period for each activity category listed in the following table [based on table at 40 CFR § 70.9(b)(2)(v)].

Activity	Burden Factor (hours per activity)
GHG Completeness Determinations (for initial permit or updated application)	43
GHG Evaluations for Permit Modification or Related Permit Actions	7
GHG Evaluations at Permit Renewal	10

For example, Air Agency X's records were reviewed to determine the number of activities that occurred for each activity category during FY16:

- 2 GHG completeness determinations for initial applicationst
- 46 GHG evaluations for permit modifications or related actions
  (11 significant modifications and 35 minor modifications)
- 20 GHG evaluations at permit renewalt

Note that the activities above are assumed to occur for each initial application, permit modification, or permit renewal, regardless of whether the source emits GHGs or is subject to applicable requirements for GHGs. Thus, there were 20 GHG evaluations at permit renewal because there were 20 permit renewals.

B.a Calculate the GHG Burden for Each Activity Category.a

The GHG burden for each activity category is calculated by multiplying the number of activitiest for each category (identified in A) by the relevant burden factor (hours/activity) listed in thet table above.t

GHG Burden = Number of activities * Burden factor (hours/activity)t

For example, Air Agency X calculated GHG burden as follows:t

- 2 Completeness Determinations * 43 hours/activity = 86 hourst
- 46 Evaluations for Mods or Related Actions * 7 hours/activityt= 322 hourst
- 20 Evaluations at Permit Renewal * 10 hours/activity = 200 hourst

C.a Calculate the Total GHG Burden (in hours).a

The total GHG burden hours are calculated by summing the GHG burden hours for each activityt category determined in B.t

For example, Air Agency X calculated total GHG burden hours as follows:
Total GHG Burden Hours = 86 hours + 322 hours + 200 hourst
= 608 hours

D.a Calculate the GHG Cost Adjustment.a

Calculate the GHG cost adjustment for the period by multiplying the total GHG burden hours (value calculated in C) by the cost of staff time.t

GHG Cost Adjustmentt= Total GHG burden hours (hours)t* Cost of staff time ($/hour)t

For example, Air Agency X's budget office reported that the average cost of staff time for the Department of Natural Resources (including wages, benefits, and overhead) for FY16 wast $56/hour.t

GHG Cost Adjustmentt= Total GHG burden hourst* Cost of staff timet
= 608 hours * $56/hour
= $34,048

Value Calculated in Step 2: GHG Cost Adjustmenta= $34,048

Step 3 – Calculate the Total Presumptive Minimum:
Calculate the total for the period by adding the cost of emissions (value calculated in Step 1) and the GHG cost adjustment, as applicable (value calculated in Step 2).

Presumptive minimumt= Cost of emission ($) + GHG cost adjustmentt($)
= $767,416 + $34,048
= $801,464

TotalaPresumptive Minimum= $801,464

Conclusion:a

$801,464 is the Air Agency X's presumptive minimum for FY16. This value would be compared against the total part 70 fee revenue for the same period to determine if the total fee revenue is greater than or less than the presumptive minimum.

August 4, 1993

MEMORANDUM

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

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

TO: Air Division Director, Regions I-X

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

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

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

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

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

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

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

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

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

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

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

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

Attachment

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

ATTACHMENT

GUIDANCE FOR STATE FEE PROGRAM DEVELOPMENT

I. GENERAL PRINCIPLES

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

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

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

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

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

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

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

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

II. ACTIVITIES EXPECTED TO BE FUNDED BY PERMIT FEES

A. Overview.

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

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

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

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

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

B. Initial program submittal, including:

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

- Development of implementation agreement between State and Regional Office.

C. Part 70 program development, including:

- Staff training.

- Permits program infrastructure development, including:

  * Legislative authority.

  * Regulations.

  * Guidance.

  * Policy, procedures, and forms.

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

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

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

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

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

D. Permits program coverage/applicability determinations, including:

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

E. Permits application review, including:

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

F. General and model permits, including:

- Development.
- Implementation.

G. Development of permit terms and conditions, including:

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

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

- Optional shield provisions.

H. Public/EPA participation, including:

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

- Response to comments received.

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

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

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

I. Permit revisions, including:

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

    * Administrative amendments.

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

    * Significant modifications.

- Analysis and processing of proposed revisions.

J. Reopenings:

- For cause.

- Resulting from new emissions standards.

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

- Certain section 110 activities, such as:

  * Emissions inventory compilation requirements.

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

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

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

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

- Implementation of Section 111 standards through part 70 permits.

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

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

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

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

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

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

* Section 112(i) early reductions.

* Section 112(j) equivalent MACT determinations.

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

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

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

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

- Development of compliance plans and schedules of compliance.

- Compliance and monitoring activities.

  * Review of monitoring reports and compliance certifications.

  * Inspections.

  * Audits.

  * Stack tests conducted/reviewed by the permitting authority.

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

- Enforcement-related activities.

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

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

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

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

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

    * Applicability.

    * Options for sources to which part 70 applies.

  - Outreach/publications on part 70 requirements.

  - Direct part 70 permitting assistance.

N. Permit fee program administration, including:

  - Fee structure development.

  - Fee demonstration.

    * Projection of fee revenues.

    * Projection of program costs if detailed demonstration is required.

  - Fee collection and administration.

  - Periodic cost accounting.

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

  - Emissions and ambient monitoring.

  - Modeling and analysis.

  - Demonstrations.

  - Emissions inventories.

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

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

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

III. FLEXIBILITY IN FEE STRUCTURE DESIGN

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

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

- Base fees on actual emissions or allowable emissions.

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

- Exempt some sources from fee requirements.

- Determine fees on some basis other than emissions.

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

IV. INITIAL PROGRAM APPROVABILITY CRITERIA

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

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

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

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

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

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

- Detailed fee demonstration.

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

C. Computation of $25/tpy presumptive minimum.

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

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

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

  * States may:

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

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

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

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

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

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

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

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

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

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

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

E. Fees collected from affected units under section 404.

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

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

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

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

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

F. Fee program accountability.

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

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

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

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

- Submitted as part of program submittal.

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

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

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

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

V. FUTURE ADJUSTMENTS TO FEE SCHEDULE

A. Continuing requirement of fee revenue adequacy.

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

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

- Results of periodic audits/accountings.
- Revised number of part 70 sources (discovery of new sources, new EPA standards, expiration of the deferral of nonmajor sources).
- Changes in the number of permit revisions.
- Changes in the number of affected units under section 404 (e.g., substitution units).
- CPI-type adjustments.
- Different activities during post-transition period.

NOTICE

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

	Fund Type	FY 03 Fund Transfers	FY 04 Fund Transfers	FY 05 Fund Transfers	FY 08 Fund Transfers	FY 09 Fund Transfers	FY 10 Fund Transfers	FY 11 Fund Transfers	FY 12 Fund Transfers	FY 13 Fund Transfers	FY 14 Fund Transfers	FY 15 Fund Transfers	FY 16 Fund Transfers	FY 17 Fund Transfers	FY 18 Fund Transfers	FY 19 Fund Transfers	FY 20 Fund Transfers	FY 03 - FY 20 Fund Transfers
							(120,100)	(132,700)	(132,700)									(385,500)
							(600)	(18,600)	(18,600)									(37,800)
					00,000)	(44,600)												(144,600)
						(2,588,400)	(3,809,600)	(1,428,800)										(7,826,800)
							(429,400)	(429,400)	(429,400)									(1,288,200)
						(142,800)	(344,700)	(480,000)	(494,000)									(1,461,500)
DEQ - Air Quality EBT 1/	OF	(2,000,000)	(11,700,000)	(14,700,000)		(8,031,500)	(2,113,100)	(800,000)					(5,500,000)		(1,500,000)			(46,344,600)
						(317,400)	(911,900)	(534,000)	(534,000)									(2,297,300)
						(65,600)	(159,500)	(95,600)	(98,000)									(418,700)
																(993,900)	(993,900)	(1,987,800)
					88,700)													(8,088,700)
DEQ - Emissions Inspection EBT 1/	OF	(2,000,000)				(8,100,000)	(8,300,000)	(8,000,000)	(3,084,400)	(10,000,000)								(39,484,400)
							(311,300)	(311,300)	(7,831,400)									(8,454,000)
						(58,100)	(140,500)	(198,900)	(208,500)									(606,000)
									(400)									(400)
						(165,000)	(100,000)											(265,000)
							(406,900)								(1,500,000)			(1,906,900)
							(59,600)	(59,600)	(59,600)									(178,800)
							(100)	(3,000)	(5,900)									(9,000)
							(700)	(19,500)	(12,700)									(32,900)
						(4,761,500)	(2,968,300)											(7,729,800)
DEQ - Indirect Cost Recovery FRAT 1/	OF					(637,400)	(1,916,600)	(616,600)	(359,900)									(3,530,500)
DEQ - Indirect Cost Recovery Pay/Benefit Reduction 1/	OF					(210,300)	(507,400)	(693,800)	0									(1,411,500)
DEQ - Institutional & Eng. Control Fund EBT 1/	NA						(224,200)	(137,100)										(361,300)
								(300)	(300)									(600)
					25,500)													(2,025,500)
						(449,100)	(674,600)	(297,700)							(500,000)			(1,921,400)
						(37,000)	(129,700)	(129,700)	(129,700)									(426,100)
							(200)	(5,100)	(5,500)									(10,800)
															(3,000,000)			(3,000,000)
DEQ - Recycling EBT 1/	OF	(1,500,000)			(1,097,100)	(3,390,800)	(550,000)	(184,700)					(2,493,700)		(2,000,000)			(11,216,300)
						(116,300)	(2,290,900)	(1,517,900)	(1,517,900)									(5,443,000)
						(14,700)	(34,900)											(49,600)
							(119,100)											(119,100)
						(400,000)												(400,000)
DEQ - Solid Waste Fee FRAT 1/	OF					(75,200)	(287,700)	0	(287,700)									(650,600)
1/	OF					(24,900)	(60,200)	(2,700)	(88,600)									(176,400)
							(130,800)											(130,800)
							(80,000)	(80,000)	(80,000)									(240,000)
DEQ - Underground Storage Tank Revolving EBT 1/	NA				(28,419,700)	(12,495,900)	(13,895,500)	(722,100)							(10,000,000)	(10,000,000)		(75,533,200)
						(1,910,600)	(4,227,800)	(4,227,800)	(4,227,800)									(14,594,000)
							(556,000)	(1,378,300)	(1,378,300)									(3,312,600)
						(165,400)	(399,900)	(566,600)	(577,800)									(1,709,700)
																		(2,400,000)
																		(3,600,000)
							(552,800)	(312,400)										(865,200)
						(9,000)	(21,700)	(26,000)	(26,200)									(82,900)
						(1,280,600)	(484,600)						(2,000,000)		(2,500,000)			(8,865,200)
						(52,300)	(1,045,900)	(747,200)	(747,200)									(2,592,600)
					00,000)	(12,900,000)												(20,900,000)
						(155,900)	(376,700)	(527,100)	(536,300)									(1,596,000)
						(1,350,000)	(733,000)											(2,083,000)
DEQ - Water Quality Fee FRAT 1/	OF						(422,400)	(422,400)	0									
DEQ - Water Quality Fee Pay/Benefit Reduction 1/	OF					(118,400)	(284,900)	(370,600)	0									

From:	Balaji Vaidyanathan
To:	Israels, Ken
Cc:	Valerie Thorsen; David Kim
Subject:	12-year lookback analysis
Date:	Thursday, June 11, 2020 12:26:32 PM
Attachments:	TV and NTV Lookback Summary.pdf TV and NTV Lookback Summary (1).xlsx

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Hi Ken. Thanks for taking the time to talk to us earlier today. Attached is the spreadsheet (excel and PDF versions attached). We hope that we are clearly making the case that on an aggregate basis over the 12-year span, we accomplished the legislative sweeps (aside from the one for the IT build in 2019) using non-Title V funds.

Also, as I mentioned, we are actively working towards two additional improvements:

1. A more precise tracking system for incoming Title V and non Title V revenues (including initial application fees, permit processing fees and annual fees).
2. Enhancements to our time tracking system to more precisely understand our delineation of labor for Title V and non Title V functions.

We look forward to your feedback. Thanks.

Balaji Vaidyanathan
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azdeq.gov

Your feedback matters to ADEQ. Visit azdeq.gov/feedback

ADEQ 12-Year Analysis of Impact of Fund Transfers on TV/NTV Balances

Assumptions for Analysis

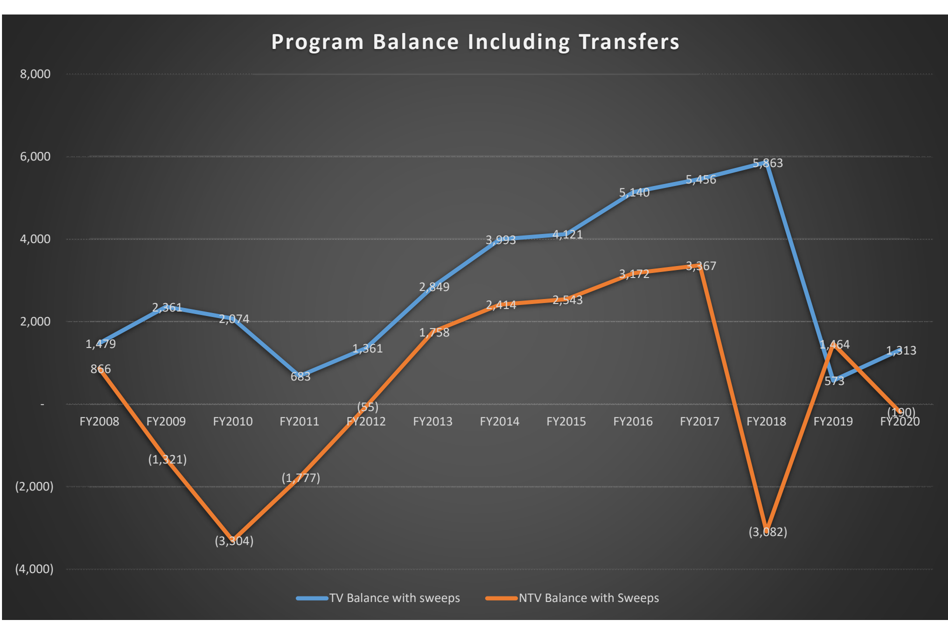
Legislative Transfers occurred at the beginning of the Fiscal Year. (Previous Year's balance paid for next Fiscal Year's transfer.)

Data utilizes 3-year 2017-2019 proportion average from TV and NTV revenues.

TV and NTV balances demonstrate the difference between the previous year's NTV balance and the fund transfer (except the myDEQ project transfer with is reflected in the TV balance).

Title V Revenue Proportion	61.8%
Non-Title V Revenue Proportion	38.2%

	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	Total
Balance Forward from Prior Year	**2,392**	**3,818**	**3,354**	**1,104**	**2,200**	**4,607**	**6,458**	**6,665**	**8,311**	**8,823**	**9,481**	**3,837**	**2,124**	63,174
TV (61.8%)	1,479	2,361	2,074	683	1,361	2,849	3,993	4,121	5,140	5,456	5,863	2,373	1,313	39,067
NTV (38.2%)	913	1,457	1,280	421	840	1,758	2,464	2,543	3,172	3,367	3,618	1,464	810	24,108
Legislative Fund Transfers	47	2,779	4,584	2,198	895		51	-						**10,722**
State General Fund											3,000			**3,000**
IT Project MyDEQ												1,800		**1,800**
WQARF											3,700		1,000	**4,700**
Total Fund Transfers	**47**	**2,779**	**4,584**	**2,198**	**895**	**-**	**51**	**-**	**-**	**-**	**6,700**	**1,800**	**1,000**	**20,222**
TV Balance with sweeps	1,479	2,361	2,074	683	1,361	2,849	3,993	4,121	5,140	5,456	5,863	573	1,313	43,122
NTV Balance with Sweeps	866	(1,321)	(3,304)	(1,777)	(55)	1,758	2,414	2,543	3,172	3,367	(3,082)	1,464	(190)	5,855



ADEQ 12-Year Analysis of Impact of Fund Transfers on TV/NTV Balances

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Total Fund Transfers	**47**	**2,779**	**4,584**	**2,198**	**895**	**-**	**51**	**-**	**-**	**-**	**6,700**	**1,800**	**1,000**	**20,222**
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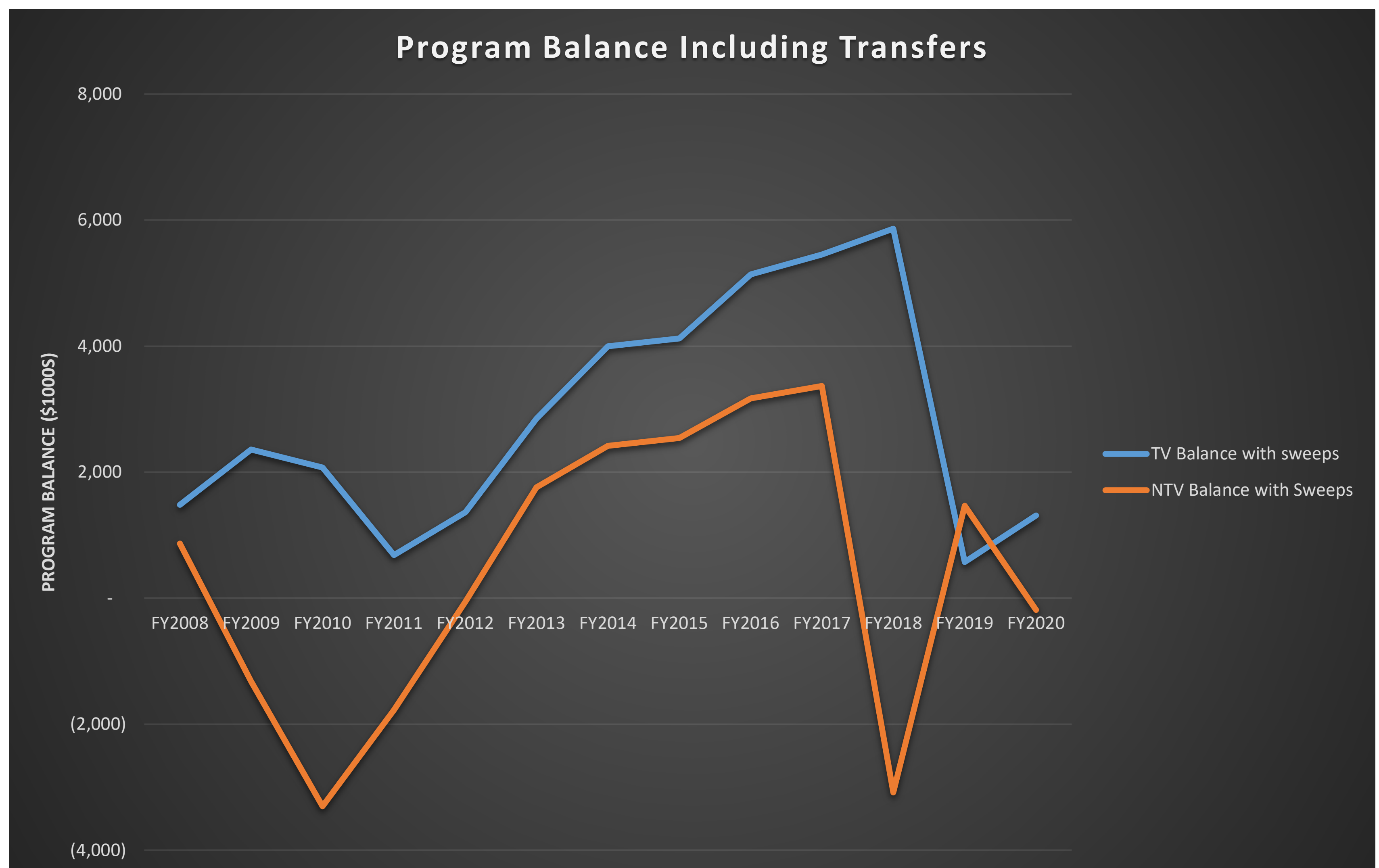

Appendix F. 2015 State Review Framework

STATE REVIEW FRAMEWORK

Arizona

Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2013

U.S. Environmental Protection Agency
Region 9, San Francisco

Final Report
July 29, 2015

Executive Summary

Introduction

EPA Region 9 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Arizona Department of Environmental Quality's Clean Water Act NPDES program, Clean Air Act Stationary Source program, and RCRA Hazardous Waste program.

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on EPA's ECHO web site.

Areas of Strong Performance

- Clean Water Act inspection coverage at major and minor facilities as well as other programs meets or exceeds commitments in the state specific CMS plan.
- Clean Water Act inspection reports meet or exceed EPA's expectations for report quality, accuracy of compliance determinations, and timeliness of completion.
- Water penalty calculation and collection is well documented.
- ADEQ evaluates air CMS sources on a more frequent basis than the minimum evaluation frequencies recommended in the CMS Policy.
- The ADEQ air inspection reports which contained more narrative were well done.
- The RCRA Field Inspection Report process is effective in supporting ADEQ's goal to complete and issue all inspection reports within 30 days of the inspection, and facilitates achievement of ADEQ's return-to-compliance objectives.

Priority Issues to Address

The following are the top-priority issues affecting the state program's performance:

- Completeness and accuracy of CWA NPDES data reported in ICIS
- Some CWA informal enforcement actions did not return facilities to compliance.
- Timely and appropriate CWA enforcement
- Air data reported into AFS is missing or inaccurate.
- Air High Priority Violations (HPVs) are not being identified, and therefore are not reported in AFS, nor enforced in a timely and appropriate manner.

Most Significant CWA-NPDES Program Issues[1]

- Completeness and accuracy of data on permit limits, discharge data, inspections, violations, and enforcement actions reported in ICIS is unreliable. (CWA Finding 1-1)
- Single event violations (SEVs) for major facilities are not reported or entered into ICIS as required by EPA. (CWA Finding 3-1)
- Significant non-compliance at major facilities is above the national average. (CWA Finding 3-3)
- 20% of reviewed enforcement actions did not return facilities to compliance. (CWA Finding 4-1)
- Timely and appropriate enforcement is low at major facilities and non-major facilities as reported to EPA and in actions reviewed on-site. (CWA Finding 4-2)

Most Significant CAA Stationary Source Program Issues

- Lack of penalty actions resulting from informal enforcement actions (Notices of Violation or Compliance.)
- Non-adherence to EPA's 1998 HPV policy regarding identifying, reporting, and acting on high priority violations.
- The accuracy of compliance and enforcement data entered into AFS (soon to be ICIS-Air) needs improvement. Data discrepancies were identified in all of the files reviewed. EPA recommends ADEQ document efforts to identify and address the causes of inaccurate Minimum Data Requirement (MDR) reporting. EPA will monitor progress through the annual Data Metrics Analysis (DMA) and other periodic data reviews.

Most Significant RCRA Subtitle C Program Issues

- All ADEQ formal enforcement actions are managed through the State Attorney General's Office. To address the inability to issue administrative orders, ADEQ has developed innovative compliance assistance and enforcement programs that achieves a high level of compliance with the regulated community. The ADEQ RCRA program consistently achieved timely and appropriate enforcement actions that returned violating facilities to compliance.

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[1] EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

TABLE OF CONTENTS

Clean Water Act Report Pages 5 - 26

Clean Water Act Report Pages 27 – 45

RCRA Report Pages 46 - 58

STATE REVIEW FRAMEWORK

Arizona

Clean Water Act
Implementation in Federal Fiscal Year 2013

U.S. Environmental Protection Agency
Region 9, San Francisco

Final Report
July 29, 2015

Executive Summary

Introduction

EPA Region 9 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Arizona Department of Environmental Quality in 2014.

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on EPA's ECHO web site.

Areas of Strong Performance

- Inspection coverage at major and minor facilities as well as other programs meets or exceeds commitments in the state specific CMS plan. (CWA Finding 2-1)
- Inspection reports meet or exceed EPA's expectations for report quality, accuracy of compliance determinations, and timeliness of completion. (CWA Findings 2-2 & 3-2))
- Penalty calculation and collection is well documented. (CWA Finding 5-1)

Priority Issues to Address

The following are the top-priority issues affecting the state program's performance:

- Completeness and accuracy of CWA NPDES data reported in ICIS
- Some CWA informal enforcement actions did not return facilities to compliance.
- Timely and appropriate CWA enforcement

Most Significant CWA-NPDES Program Issues[2]

- Completeness and accuracy of data on permit limits, discharge data, inspections, violations, and enforcement actions reported in ICIS is unreliable. (CWA Finding 1-1)
- Single event violations (SEVs) for major facilities are not reported or entered into ICIS as required by EPA. (CWA Finding 3-1)
- Significant non-compliance at major facilities is above the national average. (CWA Finding 3-3)
- 20% of reviewed enforcement actions did not return facilities to compliance. (CWA Finding 4-1)
- Timely and appropriate enforcement is low at major facilities and non-major facilities as reported to EPA and in actions reviewed on-site. (CWA Finding 4-2)

[2] EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Water Act National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

- **Data** — completeness, accuracy, and timeliness of data entry into national data systems
- **Inspections** — meeting inspection and coverage commitments, inspection report quality, and report timeliness
- **Violations** — identification of violations, determination of significant noncompliance (SNC) for the CWA and RCRA programs and high priority violators (HPV) for the CAA program, and accuracy of compliance determinations
- **Enforcement** — timeliness and appropriateness, returning facilities to compliance
- **Penalties** — calculation including gravity and economic benefit components, assessment, and collection

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every five years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2017.

II. SRF Review Process

Review period: 2013

Key dates:

CWA: On-Site File Review conducted July 8 – 11, 2014

State and EPA Key Contacts for Review:

CWA EPA Contacts: Ken Greenberg, Susanne Perkins, Liliana Christophe
CWA State Contact: Mindi Cross

III. SRF Findings

Findings represent EPA's conclusions regarding state performance and are based on findings made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the state's last SRF review
- Follow-up conversations with state agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue's severity and root causes

There are three categories of findings:

Meets or Exceeds Expectations: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

Area for State Improvement: An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write up a finding of Area for State Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric:

- **Metric ID Number and Description:** The metric's SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

Clean Water Act Findings

CWA Element 1 — Data **Metrics 1b and 2b: Completeness and accuracy of permit limit and discharge data and inspections and enforcement action data in EPA's national database.**	
Finding 1-1	**Area for State Improvement**
Summary	Throughout the review year, FY2013, ADEQ failed to input any NPDES compliance and enforcement data to EPA's Integrated Compliance Information System (ICIS), the agency's national compliance tracking database. As a result, the state did not meet EPA's expectations for completeness and accuracy of compliance and enforcement data in EPA's national database. In addition, Arizona NPDES data available to the public on EPA's ECHO database was incomplete and inaccurate. By the time of this SRF review, ADEQ had begun entering some NPDES compliance and enforcement data in ICIS. For purposes of this review, EPA evaluated the completeness and accuracy of data that ADEQ had input to ICIS as of June 16, 2014. Nevertheless, ADEQ still fell short of EPA's expectations for coding major facility permit limits and entering Discharge Monitoring Report (DMR) data in ICIS. In addition, EPA found only 52.4% of files reviewed had compliance and enforcement information accurately reported to EPA's ICIS database. Data accuracy in files reviewed is well below the national goal of 100%. Arizona's longstanding issues with data flow into ICIS have affected the rating of this finding. Data entry into the appropriate EPA database is a recurring issue from previous reviews of Arizona's NPDES program.
Explanation	Metrics 1b1 and 1b2 measure the state's rate of entering permit limits and DMR data into ICIS. Arizona entered 89.5% of permit limits into ICIS for major facilities, falling below both EPA's national goal of ≥95% and the national average of 98.4%. Arizona entered 89.2% of DMR data into ICIS, falling below both EPA's national goal of ≥95% and the national average of 97.2%. Under Metric 2b, EPA compared inspection reports and enforcement actions found in selected files to determine if the inspections, inspection findings, and enforcement actions were accurately entered into ICIS. The analysis was limited to data elements mandated in EPA's ICIS data

management policies. States are not required to enter inspections or enforcement actions for certain classes of facilities.

EPA found 11 of the 21 files reviewed (52.4%) had all required information (facility location, inspection, violation, and enforcement action information) accurately entered into ICIS. Missing DMRs and unreported enforcement actions were the most frequently cited data accuracy issues. Arizona's accuracy rate of 52.4% is well below the national goal of 100%.

The results for Metrics 1b1, 1b2, and 2b are skewed by Arizona's longstanding NPDES data flow issues into ICIS. Arizona's NPDES data stopped flowing into ICIS in November 2012. Arizona began work on resolving the data flow problems and committed to a June 30, 2013 project completion date. By September 30, 2013, the end of federal FY13, NPDES data was still not flowing nor was it flowing by the February 19, 2014 data freeze deadline for this review. Data finally began flowing in the spring of 2014. EPA manually froze the FY13 data in ICIS on June 16, 2014 in order to prepare for the site review in early July 2014. Despite Arizona's assurance that it had loaded 99.5% of the missing data to ICIS, EPA found, and ADEQ confirmed, that the data in ICIS still had many errors. As of September 30, 2014, the data is still not flowing reliably at 100% into ICIS. DMRs, some permit limit sets, and a few general bugs are causing most of the problems. Although the results for Metrics 1b1 and 1b2 appear to be nearly acceptable, if EPA had used the February 2014 frozen FY13 data, the results for both metrics would have been 0%. Although Metric 2b is already unacceptable at 52.4%, if EPA had used the February 2014 frozen FY13 data, the results for this metric would have been 0% as well.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
1b1 Permit limit rate for major facilities	≥95%	98.4%	68	76	89.5%
1b2 DMR entry rate for major facilities	≥95%	97.2%	2153	2414	89.2%
2b Files reviewed where data are accurately reflected in the national data system	100%	N/A	11	21	52.4%

State response

During the review year, FY2013, ADEQ acknowledges the issues with data flow into the ICIS database. ADEQ has dedicated staff and resources to correct these issues and appreciates EPA's technical assistance to our staff and funding additional assistance from Windsor. ADEQ has made significant progress in flowing data into ICIS.

As of January 16, 2015, ADEQ has submitted approximately 93% of discharge monitoring reports (DMRs) to ICIS for major and minor

	facilities. Historically, ADEQ did not send DMRs for minor facilities during the PCS era, so data gaps are to be expected in submissions for minors in the early part of our analysis. Additionally, ADEQ is working to address data errors that are causing DMRs and permit data to be rejected by ICIS. ADEQ had been flowing informal and formal enforcement actions into ICIS. However, due to the EPA's recent update to the ICIS node, the enforcement action data has stopped flowing. While ADEQ is currently working to update our node, this data is currently collected in a temporary data table. All the saved data will be submitted to ICIS once the update is completed.
Recommendation	• By August 15, 2015, ADEQ will ensure all relevant NPDES permit, compliance and enforcement information, including inspections, enforcement actions, and violations, is entered and regularly flowing into ICIS in accordance with EPA's data entry requirements. • EPA and ADEQ will include this as a standing agenda topic during regular meetings to track progress and ensure data is being entered and ADEQ is meeting its CWA section 106 grant workplan commitments for ICIS-NPDES data management.

CWA Element 2 — Inspections **Metrics 4a, 5a, and 5b: Inspection coverage compared to state workplan commitments.**	
Finding 2-1	**Meets or Exceeds Expectations**
Summary	Arizona met or exceeded inspection commitments in its Clean Water Act Section 106 grant workplan.
Explanation	Metrics 4a, 5a, and 5b measure the number of inspections completed by the state in the State Fiscal Year 2013 compared to the commitments in Arizona's Clean Water Act Section 106 grant workplan. EPA Region 9 established workplan inspection commitments for Arizona consistent with the inspection frequency goals established in EPA's 2007 Compliance Monitoring Strategy (CMS). Arizona inspected 35 major facilities and 18

	minor facilities during the review year, meeting the CMS-based workplan commitments of 35 major and 18 minor inspections. Arizona met all of its CMS-based workplan commitments for other inspections, completing 3 pretreatment compliance inspections; 1 pretreatment compliance audit, 1 pretreatment significant industrial user inspection, 78 industrial and 104 construction stormwater inspections; 2 municipal stormwater program inspections; and 9 concentrated animal feeding operation inspections. For metric 4a10, the CMS-based workplan includes both permitted and unpermitted CAFOs in its commitments. Arizona inspects its two permitted CAFOs on a five year cycle as required. ADEQ has inspected all of its CAFOs (permitted and unpermitted) over the last five years.

Metric ID Number and Description	State CMS	Natl Avg	State N	State D	State % or #
4a1 Pretreatment compliance inspections and audits	100%	N/A	4	4	100%
4a2 Significant Industrial User inspections for SIUs discharging to non-authorized POTWs	100%	N/A	1	1	100%
4a7 Phase I & II MS4 audits or inspections	100%	N/A	2	2	100%
4a8 Industrial stormwater inspections	100%	N/A	78	60	130%
4a9 Phase I and II stormwater construction inspections	100%	N/A	104	60	173%
4a10 Medium and large NPDES CAFO inspections	100%	N/A	9	4	225%
5a1 Inspection coverage of NPDES majors	100%	54.1%	35	35	100%
5b1 Inspection coverage of NPDES non-majors with individual permits	100%	25.9%	18	18	100%

State response	
Recommendation	

CWA Element 2 — Inspections
Metrics 6a and 6b: Quality and timeliness of inspection reports.

Finding 2-2	**Meets or Exceeds Expectations**

Summary	Arizona's inspection reports meet or exceed EPA's expectations for report quality and timeliness of completion.
Explanation	Metric 6a assesses the quality of inspection reports, in particular, whether the inspection reports provide sufficient documentation to determine the compliance status of inspected facilities. EPA reviewed 26 inspection reports; 25 were found complete and sufficient to determine compliance in accordance with the 2004 NPDES Compliance Inspection Manual guidelines. Metric 6b measures the state's timeliness in completing inspection reports within the state's recommended deadline of 30 working days for compliance evaluation inspection reports. EPA reviewed 25 inspection reports; 24 were found to be completed within the state's guidelines. One inspection report counted under Metric 6a was for an MS4 audit, which does not have a recommended deadline, so that report was not considered in Metric 6b. ADEQ is considering establishing a deadline for completion of its MS4 inspection reports.

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
6a Inspection reports complete and sufficient to determine compliance at the facility	100%	N/A	25	26	96.2%
6b Inspection reports completed within prescribed timeframe	100%	N/A	24	25	96%

State response	
Recommendation	

CWA Element 3 — Violations
Metrics 7a1, 8b and 8c: Tracking of single event violations.

Finding 3-1	**Area for State Improvement**
Summary	Arizona is not entering single event violations (SEVs) in EPA's ICIS database as required for major facilities. This is a recurring issue from previous reviews of Arizona's NPDES program
Explanation	Metric 7a1 assesses whether single-event violations (SEVs) are reported and tracked in ICIS-NPDES. SEVs are violations that are determined by

	means other than automated review of discharge monitoring reports and include violations such as spills and violations observed during field inspections. Arizona does not report single event violations in ICIS as required under EPA's data management policy. Single event violations are a required data entry for major facilities as indicated in the December 28, 2007 EPA memorandum, *ICIS Addendum to the Appendix of the 1985 Permit Compliance System Statement* (p.9). Although Arizona does not enter SEVs in EPA's ICIS database, they have a robust system for tracking SEVs in the Inspection, Compliance and Enforcement (ICE) module of the state's AZURITE database. Metric 8b requires SEVs at major facilities to be accurately identified as significant noncompliance (SNC) or non-SNC. Arizona does not record SEVs in ICIS NPDES and, therefore does not flag SEVs as SNC in ICIS. EPA has established automated and discretionary criteria for flagging discharger violations as SNC. Arizona relies on the automated DMR-based criteria to flag effluent limits and reporting violations as SNC, but does not normally make discretionary labeling of SEV violations as SNC. Metric 8c requires timely reporting of SEVs identified as SNC at major facilities. Since Arizona does not record SEVs in ICIS NPDES, the state cannot meet the requirements of this metric. For Metrics 8b and 8c, EPA reviewed 12 major facility files. None of the files had any violations noted as SEV in which to evaluate metrics 8b and 8c. A similar finding was found in Round 2 of the SRF in that ADEQ was not entering SEVs into PCS. As it does currently, ADEQ was using its AZURITE database to identify and track violations

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
7a1 Number of major facilities with single event violations	N/A	N/A	N/A	N/A	0
8b Single-event violations accurately identified as SNC or non-SNC	100%	N/A	0	0	0%
8c Percentage of SEVs identified as SNC reported timely at major facilities	100%	N/A	0	0	0%

State response	ADEQ acknowledges that SEVs are not being flowed into ICIS. ADEQ does track SEVs in our Azurite database.

Recommendation	EPA and ADEQ agree to meet within one year to discuss options for the transfer of SEV data from the state's ICE database to ICIS, including possible funding for additional IT resources.

CWA Element 3 — Violations
Metric 7e: Accuracy of compliance determinations

Finding 3-2	**Meets or Exceeds Expectations**
Summary	Inspection reports generally provide sufficient information to ascertain compliance determinations on violations found during inspections.
Explanation	Metric 7e measures the percent of inspection reports that have accurate compliance determinations. EPA reviewed 26 inspection reports and found that 23 of the reports (88.5%) led to accurate compliance determinations which is within the acceptable range of the national goal of 100%. Generally, ADEQ makes compliance determinations in its inspection reports. (Some states make compliance determinations in a separate document or memo to the file.) The reviewers also found that ADEQ's inspection report compliance determinations were carried over as a violation record in its ICE database and were often found reflected in ADEQ enforcement actions such as a Notice of Violation.
Relevant metrics	

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
7e Inspection reports reviewed that led to an accurate compliance determination	100%	N/A	23	26	88.5%

State response	
Recommendation	

CWA Element 3 — Violations
Metrics 7d1 and 8a2: Major facilities in significant non-compliance

Finding 3-3	**Area for State Attention**
Summary	The rate of significant noncompliance at major facilities in Arizona is higher than the national average.

Explanation	Metric 7d1 measures the percent of major facilities in non-compliance reported in ICIS. Based on data in ICIS, noncompliance at major facilities in Arizona was 36.61% during the review year. Arizona's rate of noncompliance is lower than the national average noncompliance rate of 62.6%. Note that, because of Arizona's data management problems, the accuracy of ICIS data used for this metric is uncertain. Metric 8a2 measures the percentage of major facilities in significant noncompliance. Twenty-one of the 71 major facilities in Arizona were in significant noncompliance for one or more quarters during the review year. The rate of significant noncompliance in Arizona (29.57%) is higher than the national average of 24.3%. Because Arizona's ICIS data was incomplete and inaccurate, EPA and ADEQ made the SNC determinations for this metric based on a combination of ICIS data (where reliable) and discharge data in ADEQ's AZURITE database.
Relevant metrics	(see table below)
State response	ADEQ was unable to complete the migration of our data into ICIS prior to PCS being taken out of production on November 29, 2012. During the same time period, ADEQ's state database was not calculating violations properly. Without electronic data management capabilities, ADEQ was reviewing monitoring and reporting data on a case-by-case basis as part of our inspection process. Currently, ADEQ has resolved the majority of issues associated with our state database. With this information and the information that is in ICIS, ADEQ has developed and implemented a Monitoring and Reporting Standard Operating Procedure (SOP) to conduct routine compliance reviews of the monitoring reporting violations and follow-up with the appropriate enforcement actions.
Recommendation	ADEQ should be able to reduce the incidence of SNC by taking timely formal enforcement as SNC violations arise. See recommendation for Finding 4-2.

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
7d1 Major facilities in noncompliance	N/A	62.6%	26	71	36.61%
8a2 Percentage of major facilities in SNC	N/A	24.3%	21	71	29.57%

CWA Element 4 — Enforcement	
Background Information	
Summary	This finding highlights the number and type of NPDES enforcement actions taken by Arizona DEQ during the review year. The finding is for information and not subject to a rating under EPA's SRF protocols.
Explanation	During State fiscal year 2013 (July 1, 2012 to June 30, 2013), Arizona DEQ issued the following enforcement actions in response to NPDES violations: 70 Informal Actions (Notices of Opportunity to Correct (NOC) or Notices of Violation (NOV) 4 Compliance Orders 1 Penalty Actions ADEQ's NOC and NOV are informal administrative enforcement actions typically used by ADEQ as its initial response to a violation. NOCs and NOVs do not create independently enforceable obligations on respondents. Compliance orders are formal administrative enforcement actions that impose independently enforceable obligations on the respondent to take actions to return to compliance. In accordance with its Compliance and Enforcement Handbook, ADEQ normally will attempt to negotiate an order on consent with respondents, but has authority to issue unilateral compliance orders if needed. ADEQ does not have authority to issue administrative penalties but can take judicial actions to impose penalties and injunctive relief obligations. As can be seen from the FY13 data, ADEQ relies primarily on informal enforcement actions to address NPDES violations. Findings 4-1, 4-2 and 5-1 evaluate ADEQ's use of these enforcement tools against EPA's SRF review criteria.

CWA Element 4 — Enforcement
Metric 9a: Enforcement actions promoting return to compliance

Finding 4-1	**Area for State Improvement**
Summary	Although most enforcement actions reviewed promote return to compliance, about 20% of the reviewed enforcement actions did not result in a return to compliance.
Explanation	Metric 9a measures the percent of enforcement responses that return or will return the source to compliance. EPA found 21 of 26 enforcement actions reviewed promote return to compliance compared to the national goal of 100%. The 26 enforcement actions reviewed in selected ADEQ files included 17 informal actions (NOC or NOV), 7 compliance orders and 2 judicial actions. To evaluate the informal actions, EPA determined if the file had a record of the discharger timely returning to compliance in response to ADEQ's NOC or NOV. For compliance orders or judicial actions, EPA assumed that the action promoted a return to compliance if the enforcement action imposed enforceable injunctive relief obligations or if the file noted an actual return to compliance. In four cases (1 NOC and 3 NOVs), ADEQ closed the informal enforcement action prior to the discharger returning to full compliance. ADEQ had issued these four informal actions to address reporting violations at three different facilities. (One facility received two NOVs.) In a fifth case, ADEQ issued an informal enforcement action (NOV) against a facility with SNC level violations. The facility was in SNC for all four quarters of FY13 and the SNC continued after ADEQ issued the NOV. As of the date of the SRF review, ADEQ had not escalated its enforcement beyond an NOV.
Relevant metrics	(see table below)
State response	Compliance is a core mission of ADEQ and there are two performance measures related to facility compliance in ADEQ's Strategic Plan. Our key compliance goals are to reduce the amount of time that a facility is out of compliance by 50% over five years; and to increase the number of facilities that are in compliance at the time of inspection by 50% over five years. It

Metric ID Number and Description	**Natl Goal**	**Natl Avg**	**State N**	**State D**	**State % or #**
9a Percentage of enforcement responses that return or will return source in violation to compliance	100%	N/A	21	26	81%

	should be noted that ADEQ does not consider issuance of a formal action to mean compliance for the purposes of these measures. Our focus is for facilities to be in actual compliance with their regulatory requirements. While ADEQ is pleased that over 80% of our enforcement actions resulted in compliance, we are committed to continuous improvement. ADEQ acknowledges that informal enforcement actions were not always escalated in a timely manner when compliance deadlines were missed. To address these concerns, ADEQ has made changes to our compliance and enforcement processes: • As of January 2013, ADEQ streamlined our escalated enforcement approach so that issuance of a consent order is pre-approved by management if an entity fails to comply with a NOV. • The Water Quality Compliance Section has developed and implemented a Monitoring and Reporting SOP to conduct routine review of monitoring and reporting data. By identifying and responding to violations in a timely manner, ADEQ will continue to reduce the time that a facility remains out of compliance and therefore reduce the number of facilities in SNC.
Recommendation	EPA acknowledges ADEQ is unable to commit to adopting and implementing revisions to its enforcement response procedures to provide for increased automatic formal enforcement against facilities in SNC. With that acknowledgement and by July 31, 2015, • ADEQ will commit to follow its revised Compliance and Enforcement Procedures and Monitoring and Reporting procedures using a combination of formal and informal actions. • ADEQ will escalate NOVs to a formal enforcement action following the timeframes outlined in its revised Compliance and Enforcement Procedures. • EPA will be prepared to take enforcement against facilities in SNC or with other violations if ADEQ is not able to take timely and appropriate formal enforcement, or if ADEQ requests assistance, and in other circumstances EPA deems appropriate. The exact form and amount of EPA's assistance will be determined as EPA monitors ADEQ progress in meeting its yearly workplan goals.

CWA Element 4 — Enforcement **Metrics 10a and 10b: Timely and appropriate enforcement actions**	
Finding 4-2	**Area for State Improvement**
Summary	Enforcement actions taken at major and non-major facilities are not timely or appropriate. This is a recurring issue from previous reviews of Arizona's NPDES program.
	For this finding, EPA used two metrics (metrics 10a and 10b) to evaluate whether ADEQ is addressing violations with appropriate enforcement actions and whether ADEQ's enforcement responses were taken in a timely manner. Metric 10a was used to assess ADEQ response to SNC level violations at major facilities. EPA examined ADEQ's enforcement response to each of the 21 major facilities that had SNC level violations during federal FY2013. EPA policy dictates that SNC level violations must be addressed with a formal enforcement action (administrative compliance order or judicial action) issued within 5 ½ months of the end of the quarter when the SNC level violations initially occurred. Metric 10b was used to assess ADEQ's enforcement response to any type of violation (SNC or lower level violations) at any type of facility (major, minor or general permit discharger). EPA's evaluation of metric 10b was based on review of 27 files selected to represent a cross section of facilities operating in Arizona. EPA expectations for enforcement response are provided in its Enforcement Management System which includes the strict expectations cited above for enforcement response to major facility SNC violations as well as the somewhat more subjective guidelines for responses to non-SNC violations. For metric 10a, EPA and ADEQ reviewed ICIS data (where reliable) and discharge data in ADEQ's AZURITE database to determine that 21 major facilities had SNC level violations in federal FY2013. ADEQ reported that they took no enforcement against 8 of these facilities and used informal enforcement actions (NOC or NOV) to address the violations at 9 of the facilities. ADEQ issued formal enforcement actions (administrative compliance orders on consent) against 4 of the SNC facilities. However, 3 of these consent orders were not timely as they were issued more than 5 ½ months following the onset of SNC violations. (ADEQ has noted the difficulty of reaching agreement on a consent order within EPA's timeliness deadline.) In summary, ADEQ issued a timely and appropriate enforcement action against 1 of the 21 facilities with SNC level violations in federal FY2013.

	EPA policy states that no more than 2% of the total majors in the state should be in SNC without an appropriate enforcement action. It appears that Arizona had 28% of its major dischargers (20 of 71) in SNC during FY2013 without a timely and appropriate enforcement response. For metric 10b, EPA reviewed 27 files that included documentation that a violation had occurred at the facility. These files included a mix of major, minor and general permitted facilities. Several of the files were major facilities with SNC violations that were also considered under metric 10a. EPA found 15 instances where ADEQ's enforcement response was judged to be appropriate for the nature of the violation. ADEQ's enforcement actions included 1 warning letter, 2 NOCs, 8 NOVs, 2 compliance orders and 2 judicial actions. On the other hand, EPA found 11 instances where ADEQ's enforcement response was not timely and appropriate for the nature of the violation. These included 2 NOVs and 5 compliance orders where EPA found the action to be appropriate, but late. In addition, EPA found 4 instances where ADEQ either took no enforcement or an informal action where EPA thought a formal action was warranted. In summary, EPA found that ADEQ took appropriate action in 15 of the 27 files reviewed (55.6%). This same finding was identified in Rounds 1 and 2 of the SRF. ADEQ did not implement EPA's Round 1 and Round 2 recommendations to issue formal enforcement against facilities with SNC level violations. ADEQ's Compliance and Enforcement Handbook calls for informal enforcement actions (NOC or NOV) as the initial response to most violations. As a result, ADEQ issues few formal enforcement actions.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
10a1 Major facilities with timely action as appropriate			1	21	4.8%
10b Enforcement responses reviewed that address violations in an appropriate manner	100%	N/A	15	27	55.6%
Choose an item.					

State response	As discussed in Finding 4-1, facility compliance is a key to ADEQ's success and we will continue to work on improving our processes. However, ADEQ is unable to commit to adopting and implementing revisions to its enforcement response procedures to provide for increased automatic formal enforcement against facilities in SNC. ADEQ will commit to taking more timely enforcement actions using a combination of formal and informal enforcement actions following our Compliance and Enforcement Procedures.

Recommendation	EPA acknowledges ADEQ is unable to commit to adopting and implementing revisions to its enforcement response procedures to provide for increased automatic formal enforcement against facilities in SNC. With that acknowledgement and by July 31, 2015, • ADEQ will commit to follow its revised Compliance and Enforcement Procedures and Monitoring and Reporting procedures using a combination of formal and informal actions. • ADEQ will escalate NOVs to a formal enforcement action following the timeframes outlined in the revised Compliance and Enforcement Procedures. • EPA will be prepared to take enforcement against facilities in SNC or with other violations if ADEQ is not able to take timely and appropriate formal enforcement, or if ADEQ requests assistance, and in other circumstances EPA deems appropriate. The exact form and amount of EPA's assistance will be determined as EPA monitors ADEQ progress in meeting its yearly workplan goals.

CWA Element 5 — Penalties **Metrics 11a, 12, and 12b: Penalty calculation and collection**	
Finding 5-1	**Meets or Exceeds Expectations**
Summary	ADEQ properly considered economic benefit and gravity in its penalty calculation and documented collection of the penalty payment.
Explanation	Metric 11a assesses the states method for calculating penalties and whether it properly documents the economic benefit and gravity components in its penalty calculations. Metric 12a assesses whether the state documents the rationale for changing penalty amounts when the final value is less than the initial calculated value. Metric 12b assesses whether the state documents collection of penalty payments. EPA's findings for metrics 11a, 12a and 12b are based on review of the single penalty action taken by ADEQ during the review year. In the file for its penalty action, ADEQ properly documented consideration of economic benefit and gravity in its penalty calculation (metric 11a) and had a copy of the electronic funds transfer documenting receipt of the penalty payment (metric 12b). Metric 12a does not apply for this action as the penalty payment was not less than ADEQ's initial penalty calculation.
Relevant metrics	

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #

	11a Penalty calculations reviewed that consider and include gravity and economic benefit	100%	N/A	1	1	100%
	12a Documentation of the difference between initial and final penalty and rationale	100%	N/A			N/A
	12b Penalties collected	100%	N/A	1	1	100%
State response						
Recommendation						

STATE REVIEW FRAMEWORK

Arizona Department of Environmental Quality

Clean Air Act
Implementation in Federal Fiscal Year 2013

U.S. Environmental Protection Agency
Region 9

Final Report
July 29, 2015

Executive Summary

Introduction

The U.S. Environmental Protection Agency (EPA) Region 9 Air & TRI Enforcement Office conducted a State Review Framework (SRF) enforcement program oversight review of the Arizona Department of Environmental Quality (ADEQ) in 2014.

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on the EPA ECHO web site.

Areas of Strong Performance

- ADEQ evaluates CMS sources on a more frequent basis than the minimum evaluation frequencies recommended in the CMS Policy.
- The ADEQ inspection reports which contained more narrative were well done.

Priority Issues to Address

- Data reported into AFS is missing or inaccurate.
- High Priority Violations (HPVs) are not being identified, and therefore are not reported in AFS, nor enforced in a timely and appropriate manner.

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Most Significant CAA Stationary Source Program Issues[3]

- Lack of penalty actions resulting from informal enforcement actions (Notices of Violation or Compliance.)

- Non-adherence to EPA's 1998 HPV policy regarding identifying, reporting, and acting on high priority violations.

- The accuracy of compliance and enforcement data entered into AFS (soon to be ICIS-Air) needs improvement. Data discrepancies were identified in all of the files reviewed. EPA recommends ADEQ document efforts to identify and address the causes of inaccurate Minimum Data Requirement (MDR) reporting. EPA will monitor progress through the annual Data Metrics Analysis (DMA) and other periodic data reviews.

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[3] EPA's "National Strategy for Improving Oversight of State Enforcement Performance" identifies the following as significant recurrent issues: "Widespread and persistent data inaccuracy and incompleteness, which make it hard to identify when serious problems exist or to track state actions; routine failure of states to identify and report significant noncompliance; routine failure of states to take timely or appropriate enforcement actions to return violating facilities to compliance, potentially allowing pollution to continue unabated; failure of states to take appropriate penalty actions, which results in ineffective deterrence for noncompliance and an unlevel playing field for companies that do comply; use of enforcement orders to circumvent standards or to extend permits without appropriate notice and comment; and failure to inspect and enforce in some regulated sectors."

I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Water Act National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

- **Data** — completeness, accuracy, and timeliness of data entry into national data systems
- **Inspections/Evaluations** — meeting inspection/evaluation and coverage commitments, inspection (compliance monitoring) report quality, and report timeliness
- **Violations** — identification of violations, determination of significant noncompliance (SNC) for the CWA and RCRA programs and high priority violators (HPV) for the CAA program, and accuracy of compliance determinations
- **Enforcement** — timeliness and appropriateness, returning facilities to compliance
- **Penalties** — calculation including gravity and economic benefit components, assessment, and collection

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state/local understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state/local programs.

Each state/local programs are reviewed once every four years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2016.

II. SRF Review Process

Review period: FY 2013

Key dates:

- Kickoff letter sent to ADEQ: April 16, 2014
- Kickoff meeting conducted: June 9, 2014
- CAA data metric analysis and file selection list sent to ADEQ: May 8, 2014
- On-site CAA file review: June 9, 2014 – June 11,2014
- Draft report sent to ADEQ: January 5, 2015
- Report finalized: July 29, 2015

State and EPA key contacts for review:

ADEQ

- Timothy Franquist, Manager Air Quality Compliance Section at the time of the review
- Marina Mejia, Air Quality Supervisor
- Pam Nicola, Air Quality Supervisor at the time of the review

EPA Region 9

- Matt Salazar, Manager, Air & TRI Office, Enforcement Division
- Andrew Chew, Case Developer/ Inspector, Air & TRI Office, Enforcement Division
- Debbie Lowe-Liang, Case Developer/ Inspector ,Air & TRI Office, Enforcement Division
- Jennifer Sui, AFS Coordinator, Information Management Section, Enforcement Division
- Robert Lischinsky, Office of Compliance, Office of Enforcement and Compliance Assistance

III. SRF Findings

Findings represent EPA's conclusions regarding state/local performance and are based on findings made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the previous state/local SRF review
- Follow-up conversations with state/local agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue's severity and root causes

There are three categories of findings:

Meets or Exceeds Expectations: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state/local performs above national program expectations.

Area for State/Local Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state/local should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

Area for State/Local Improvement: An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write up a finding of Area for State/Local Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric:

- **Metric ID Number and Description:** The metric's SRF identification number and a description of what the metric measures.
- **Natl. Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state/local has made.
- **Natl. Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

Clean Air Act Findings

Element 1 — Data	
Finding 1-1	**Area of State Improvement**
Summary	The File Review indicated that information reported into AFS was not consistent with the information found in the files reviewed.
Explanation	Review Metric 2b evaluates the completeness and accuracy of reported MDRs in AFS. Timeliness is measured using the date the activity is achieved and the date it is reported to AFS. While the national goal for accurately reported data in AFS is 100%, only 14.3% of reviewed data in the files was accurately reported. Inaccuracies were related to facility information (incorrect names, addresses, contact phone numbers, CMS information, pollutants, operating status, etc.) and missing or inaccurate activity data (e.g., incorrect FCE dates entered; stack test not reported to AFS). Incorrect data in ICIS-Air (AFS) potentially hinders targeting efforts and results in inaccurate information being released to the public. Metric 3a2 measures whether HPV determinations are entered into AFS in a timely manner (within 60 days) in accordance with the AFS Information Collection Request (AFS ICR) in place during FY 2013. The metric indicates that no HPV determination was reported timely as no HPVs were entered. EPA policy requires all HPV determinations to be reported to AFS within 60 days. Metric 3b1 measures the timeliness for reporting compliance-related MDRs (FCEs and Reviews of Title V Annual Compliance Certifications). Out of 153 individual actions, 130 were reported within 60 days (85%). This is below the goal of 100%. Metric 3b2 evaluates whether stack test dates and results are reported within 120 days of the stack test. The national goal for reporting results of stack tests is to report 100% of all stack tests within 120 days. Out of 66 stack tests, only 34 were reported within 120 days (51.5%), below the national average and the national goal. Metric 3b3 measures timeliness for reporting enforcement-related MDRs within 60 days of the action. The actions reported by ADEQ were Notices of Violations and Administrative Orders. Out of 14 enforcement MDR reporting, only 8 were reported within 120 days (57.1%).

Metrics 7b1, 7b2 and 7b3 use indicators of an alleged violation to measure the rate at which violations are accurately reported into AFS. Violations are reported by changing the compliance status of the relevant air program pollutant in AFS. Metrics 7b1 and 7b3 are "goal" indicators with a goal of 100% of violations reported.

Metric 7b1 indicates that for all 7 NOVs issued, ADEQ did not change the compliance status to either "in violation" or "meeting schedule."

Similarly, for HPVs, Metric 7b3 indicates that for all HPVs identified at major sources in FY2011, ADEQ did not change the compliance status to either "in violation" or "meeting schedule." ADEQ did not adhere to the 1998 HPV Policy with regard to identifying HPVs (see Finding 3-1); because no HPV's were identified, none were reported in AFS. Meeting the recommendation under Finding 3-1 should rectify this concern.

Relevant metrics

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
2b- Accurate MDR Data in AFS	100%		4	28	14.3%
3a2- Untimely Entry of HPVs	0				NA(no HPVs)
3b1 – Timely Reporting of Compliance Monitoring MDRs	100%	80.9%	130	153	85.0%
3b2 – Timely Reporting of Stack Test Dates and Results	100%	75.4%	34	66	51.5%
3b3 – Timely Reporting of Enforcement MDRs	100%	68.7%	8	14	57.1%
7b1 – Violations Reported Per Informal Actions	100%	59.5%	0	7	0%
7b3 – Violations Reported Per HPV Identified	100%	57.5%	0	0	N/A

State Response	ADEQ understands that inaccurate data appears to have been reported to AFS and agrees that inaccurate data is undesirable and does not provide for the greatest level of transparency. EPA's report indicates that only 14.3% of reviewed data was accurately reported. ADEQ is committed to correcting any inaccuracies. To assist in the corrections, ADEQ requests that EPA provide the AFS facility list that it reviewed. In addition, ADEQ requests that EPA provide the list of reviewed data and any inaccuracies that were identified to assist in the timeliness of the required updates. ADEQ agrees that HPVs were not reported timely as no HPVs had been entered at the time of the SRF field work. During the exit debrief on June 11, 2014, EPA brought this concern to ADEQ's attention. Immediately after the issue was brought to ADEQ's attention, a concerted effort was made to provide EPA with a reconciliation document that identified past HPVs for the review period. This spreadsheet was sent by e-mail to Mr. Matt Salazar with EPA Region 9 by Mr. Tim Franquist of ADEQ on June 16, 2014. EPA acknowledged receipt of the e-mail and ADEQ has yet to hear whether the information reported meets EPA's expectations. Moving forward, ADEQ intends to ensure that HPVs are appropriately identified by instituting a new training course for all Air Quality Division compliance staff. A copy of the final training material will be provided to EPA at the time it is completed on or before March 30, 2015. Although all Air Quality Division staff has been provided with a copy of the 1998 HPV policy, given the update to the policy in September 2014 and the need to implement the training program, ADEQ anticipates the need for another reconciliation that will be provided on March 30, 2015. ADEQ agrees that timely reporting is important. Since the exit debrief on June 11, 2014, ADEQ has assigned a staff member to direct enter data into EPA's ICIS-Air. ADEQ understands that as of September 2014, the timeliness of reporting to ICIS-Air increased to 99%. Additionally, ADEQ continues to make progress on the HPV training course. With training and direct entry of data, ADEQ expects that all of the issues related to the timeliness portion of this finding have been resolved.
Recommendation	• By August 31, 2015, EPA will provide ADEQ with the AFS facility list and identified data inaccuracies. By October 15, 2015, ADEQ should provide EPA with corrections to both the AFS facility list and all data inaccuracies. • By August 31, 2015, ADEQ will provide EPA with a final HPV identification training course for all air quality compliance staff. By December 31, 2015, ADEQ will provide EPA with documentation demonstrating that the training course has been implemented, the number of compliance staff trained, and data regarding the number of HPVs identified after the training course is complete. • By August 31, 2015, ADEQ will provide EPA with a HPV reconciliation document that ensures that HPVs between June 12, 2014 and August 15, 2015 have been properly identified. • By December 31, 2015, ADEQ will provide EPA with a HPV reconciliation document that ensures that HPVs between August 31 2015 and December 31, 2015 have been properly identified.

Element 2 — Inspections/Evaluations	
Finding 2-1	**Meets Expectations**
Summary	ADEQ met the negotiated frequency for compliance evaluations of CMS sources.
Explanation	This Element evaluates whether the negotiated frequency for compliance evaluations is being met for each source. ADEQ met the national goal for the relevant metrics. ADEQ met the negotiated frequency for conducting FCEs of major and SM80s. ADEQ ensured each major source was evaluated with an FCE once every 2 years and each SM80 once every 5 years. Note: The l00% achievement rate noted in the table below differs from what would be derived using the “frozen data set”, because upon review of the reported frozen data we found the state had reported a higher, inaccurate universe of facilities than actually existed. The FCEs do not match all of the Title V and SM80 facilities identified in the 2010 ADEQ CMS policy (likely due to facility closures, openings, and facilities that changed names). Our review confirmed a universe of 56 majors (and one SM80), versus 93 reported in the frozen data set. ADEQ did 57 FCE inspections in FYs 12 and 13. ADEQ should revisit the CMS plan on a regular basis and update for accuracy. EPA commends ADEQ for full compliance evaluations at major facilities, an impressive accomplishment given the distance and complexities of the sources they regulate. ADEQ goes beyond the minimum frequencies, and inspects sources more often than EPA’s CMS policy indicates. If ADEQ believes their resources can be put to better use, EPA can approve alternative CMS plans that are not completely consistent with CMS recommended evaluation frequencies for local and state agencies to shift resources to other sources of concern, if needed.
Relevant metrics	

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
5a – FCE Coverage Majors	100%	88.5	29	42	69.0%
5b – FCE Coverage SM80s	100%	93.3	0	1	0%
5c – FCE Coverage CMS non-SM80s	N/A				N/A

	5d – FCE Coverage CMS Minors — N/A — N/A
State Response	
Recommendation	None required.

Element 2 — Inspections/Evaluations	
Finding 2-2	**Meets Expectations**
Summary	ADEQ nearly fully completed the required review for each Title V Annual Compliance Certification (ACC).
Explanation	This Element evaluates whether the delegated agency has completed the required review for Title V Annual Compliance Certifications. While ADEQ has exceeded the national average, the goal for annual review of Title V certifications is 100%. The data indicates that 1 certification was not timely reviewed in FY 2012. Arizona has opted to require semi-annual certifications, rather than one annual certification. In lieu of submitting one annual Title V compliance certification, it is acceptable to submit two semi-annual certifications with each certification covering a 6 month period (i.e., January 1-June 30, and July 1-December 31), as long as the aggregation of the two reports adequately and accurately covers the annual compliance period. While EPA recommends the second semi-annual certification incorporate by reference the first semi-annual certification in order to formally satisfy the annual compliance obligation, such incorporation is not an absolute requirement if, again, the aggregation of the two reports provides complete annual coverage. EPA commends ADEQ for being significantly above the national average for reviewing Title V Annual Compliance Certifications. It would be ideal to report all of the certifications in ICIS-AIR.
Relevant metrics	

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
5e – Review of TV ACCs	100%	81.3%	45	46	97.8%

State Response	
Recommendation	None required.

Element 2 — Inspections/Evaluations	
Finding 2-3	**Area for State Attention**
Summary	Overall, the ADEQ compliance monitoring reports (CMRs) provided were adequate, but small additions of relevant information may make them more useful to inspectors.
Explanation	EPA appreciates the "Lean" Transformation Process undertaken by ADEQ and the overhaul of state processes to obtain improvements and increase effectiveness. In addition, ADEQ has been able to overcome past financial issues and refill staff vacancies, as needed. Developing an updated ADEQ Handbook with an SOP is a positive outcome. EPA also appreciates the effort to promote efficiency by updating the field inspection reports. 28 ADEQ compliance monitoring reports (aka Air Quality Field Inspection Reports) were reviewed under this Element. In reviewing the majority of the reports, it is unclear if all 7 CMR elements as discussed in the CMS policy were addressed in the reports. Report should include sufficient numerical detail to ensure the 7 CMR elements are adequately addressed. For example, including the production rate of a facility would enable one to determine if a previous or future source test is conducted at the appropriate production rate; including a significant control device parameter (i.e., incinerator temperature), would also be helpful information. Reviewers found 14 of 28 inspections were fully documented. In a few of those 14, when there were deficiencies noted during inspections, there was significant documentation of those deficiencies.
Relevant metrics	

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
6a – Documentation of FCE Elements	100%		14	28	50.0%
6b – CMRs/Sufficient Documentation to Determine Compliance	100%		14	28	50.0%

State Response	ADEQ agrees that numeric information associated with specific permit conditions should be added to the standardized inspection reports. While these records will only provide a "snapshot" of the actual operating conditions of the facility at the time of inspection, this will ensure that the field observations and inspection meet both quality and defensibility standards. • By August 31, 2015, ADEQ will send EPA a list of all general types of standardized inspection reports that have been completed for CMS facilities. • By December 31, 2015, as appropriate, ADEQ will include additional numeric detail in all general types of standardized permit inspection reports that were listed as complete on August 31, 2015.
Recommendation	None required.

Element 3 — Violations	
Finding 3-1	**Area for State/Local Improvement**
Summary	In general, compliance determinations are accurately made and promptly reported into AFS based on the CMRs reviewed and other compliance monitoring information. ADEQ falls below the national average for HPV discovery rate.
Explanation	Metric 7a is designed to evaluate the overall accuracy of compliance determinations and Metric 8c focuses on the accurate identification of violations that are determined to be HPVs. Reviewed files identified circumstances where ADEQ should have reported violations as either FRVs or HPVs into AFS and pursued enforcement, which ADEQ did not do. For active major sources, ADEQ is not identifying HPVs. For 7a, there was simply not enough information in the short inspection checklists to determine for 50% of the files reviewed whether the inspector did enough to verify compliance. In the more detailed inspection reports, the inspectors appeared to have strong technical skills and made appropriate compliance determinations.

	ADEQ did not adhere to the 1998 HPV Policy and inspectors did not recognize when violations met the HPV criteria and should have been identified/reported as HPVs (as reflected and confirmed in the internal HPV audit list). There were NOV and NOCs EPA reviewed during the file review that did not have adequate follow up. NOVs for failure to follow dust control, file multiple reports, and other significant permit requirements had no penalty actions associated with them. The NOV/NOC Decision matrix ("Air Quality Division NOV Assessment Matrix") raises concern and indicates a lack of adequate responsiveness/seriousness to both reporting violations and emission violations that exceed the limit. EPA acknowledges that Arizona lacks administrative penalty authority which constrains its ability to assess penalties for many medium and smaller cases. Lack of administrative authority, however, dos not relieve the state of its obligation to pursue timely and appropriate enforcement actions.
Relevant metrics	(see table below)
State Response	ADEQ has already responded to the first two key issues in Findings 1-1 and 2-3, and incorporates those responses by reference here. ADEQ also believes that implementing the proposed recommendations for both of those Findings will resolve some of the issues identified by EPA in this area. ADEQ agrees that non-compliance with permit and rule conditions, especially those that result in a discharge to the environment or would provide credible evidence of a potential discharge to the environment are critical to the accomplishment of ADEQ's mission which is "to protect and enhance public health and the environment". In the finding, EPA states that there was "…not enough information in the short inspection checklist to determine for 50% of the files reviewed whether the inspector did enough to verify compliance." In the relevant metrics, EPA lists

Relevant metrics:

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
Metric 7a – Accurate Compliance Determinations	100%		14	28	50.0%
Metric 8a – HPV Discovery Rate at Majors		4%	0	56	0%
Metric 8c – Accuracy of HPV Determinations	100%		0	4	0%

	this same 50% as "Accurate Compliance Determinations." ADEQ agrees that additional information can be added to the inspection checklist and has committed to making appropriate changes to require numerical values be included when available. However, a limited lack of specificity that impacted EPA's ability to audit the inspection reports as desired does not mean that 50% of the inspections were inaccurate. During a face-to-face meeting at ADEQ's offices on January 26, 2015, EPA provided some specific examples for this finding. In the discussion, EPA identified three specific cases it thought warranted penalties for the violations that were identified by ADEQ, the last two of which have received Clean Air Act Section 114 letters from EPA: 1. Needle Mountain for failure to provide six semi-annual compliance certifications; 2. Novo Biopower for emissions violations; and 3. Drake Cement Company for emissions violations, missing monitoring, and other issues. Since the meeting, ADEQ has reviewed the record for Needle Mountain and found all six semi-annual compliance certifications in its files. Copies of these compliance certifications are attached to complete EPA's file review. ADEQ is investigating how these compliance certifications were not included in the files that EPA reviewed for this facility. With respect to Novo Biopower, after the emissions violations occurred the facility was sold to a new owner who has been working closely with ADEQ to ensure that the facility is properly repaired and can operate in compliance with the permit that has been issued to the facility. Seeking a major penalty against a new owner who has agreed to purchase the facility to bring it into compliance despite its past history of noncompliance is counterproductive to ADEQ's mission. Were ADEQ to seek a penalty against the new owner, it creates a deterrent to behavior that should be encouraged – protecting the environment from additional violations by changing to more responsible corporate ownership. The Drake Cement NOVs remain under ADEQ review at this time as we attempt to better understand the facts related to this potential case. ADEQ will follow-up with EPA once it has completed its root cause analysis. ADEQ disagrees that the NOV/NOC decision matrix is responsible for any of the concerns that EPA has identified. This tool was developed in an effort to help staff understand when a potential deficiency needs to be reviewed with the Division Director. This is not to inhibit the issuance of NOVs. Instead, ADEQ wants those that receive a NOV from ADEQ to react in a fashion similar to when they receive an EPA Finding of Violation. By agreeing that an issue deserves an NOV, the Division Director is also providing staff with implicit authority to pursue escalated enforcement including but not limited to abatement orders and escalated enforcement. ADEQ also understands that the facilities in the examples provided by EPA received NOVs when warranted.

Recommendation	EPA and ADEQ will have a conference call by 9/1/2015 to discuss the details supporting EPA determinations. A recommendation will then be redrafted for incorporation in the final version of this SRF.

Element 4 — Enforcement	
Finding 4-1	**Area for State/Local Improvement**
Summary	The one enforcement action available for review in this period required corrective action that returned the facility to compliance in a specified timeframe. EPA believes additional formal enforcement would be appropriate based on review of other facility files. ADEQ does not report HPVs.
Explanation	During fiscal year 2013, Arizona DEQ issued the following enforcement actions in response to CAA violations: __7__ facilities with Informal Actions (Notices of Opportunity to Correct or Notices of Violation) __1__ Compliance Orders __1__ Penalty Actions EPA was only able to review one formal enforcement action for Mineral Park. ADEQ does not have a large source universe, however, there were other instances where EPA's file review found facilities for which EPA believes formal enforcement and penalties would be appropriate. For example, there were two facilities with significant and lengthy violation and NOCs with no penalty actions. EPA welcomes the opportunity to discuss these facilities with ADEQ in greater detail. ADEQ's NOC and NOV are informal administrative enforcement actions typically used by ADEQ as its initial response to a violation. NOCs and NOVs do not create independently enforceable obligations on respondents. Compliance orders are formal administrative enforcement actions that impose independently enforceable obligations on the respondent to take actions to return to compliance. In accordance with its Compliance and Enforcement Handbook, ADEQ normally will attempt to negotiate an order on consent with respondents, but has authority to issue unilateral compliance orders if needed. ADEQ does

	not have authority to issue administrative penalties, but can take judicial actions to impose penalties and injunctive relief obligations. EPA acknowledges that Arizona's lack of administrative penalty authority may constrain their ability to get penalties for many medium and smaller cases. If there are instances where ADEQ's authority limits their desired approach in enforcement, EPA would be happy to discuss whether EPA action in these cases is appropriate and feasible, as EPA does have administrative penalty authority. Penalties have been shown to level the playing field and ensure that companies that comply are not at an economic disadvantage when their competitors do not comply and receive no penalty for the non-compliance. Metric 10a is designed to evaluate the extent to which the agency takes timely action to address HPVs. ADEQ did not typically code violations as HPVs, though file review indicated instances where an HPV designation would have been appropriate. ADEQ did not adhere to the 1998 HPV Policy and inspectors did not recognize when violations meet the HPV criteria and should be identified/reported as HPVs (as reflected and confirmed in the internal HPV audit list).
Relevant metrics	(see table below)
State Response	ADEQ welcomes the opportunity to continue working with EPA regarding its compliance and enforcement strategies. ADEQ also incorporates its responses to Findings 1-1 and 2-3 by reference.
Recommendation	EPA acknowledges ADEQ is unable to commit to adopting and implementing revisions to its enforcement response procedures to provide for increased automatic formal enforcement against violating facilities at this time. With that acknowledgement and by August 31, 2015, • ADEQ will commit to follow its revised Compliance and Enforcement Procedures and Monitoring and Reporting procedures using a combination of formal and informal actions.

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
9a – Formal Enforcement Returns Facilities to Compliance	100%		1	1	100%
10a – Timely Action Taken to Address HPVs	67.5%		0	0	N/A
10b – Appropriate Enforcement Responses for HPVs	100%		0	0	N/A

	• ADEQ will escalate NOVs to a formal enforcement action following the timeframes outlined in its revised Compliance and Enforcement Procedures. • EPA will be prepared to take enforcement against facilities in violation if ADEQ is not able to take timely and appropriate formal enforcement, or if ADEQ requests assistance, and in other circumstances EPA deems appropriate. The exact form and amount of EPA's assistance will be determined as EPA monitors ADEQ progress in meeting its yearly workplan goals. . In addition: • EPA and ADEQ now conduct routine conference calls, and have discussed instances where EPA's file review found facilities for which EPA believes penalty actions or formal enforcement would be appropriate, and where HPV designation may be appropriate. By August 31, 2015, EPA will confer again with ADEQ to clarify any outstanding issues in this regard. • By October 31, 2015, ADEQ will report to EPA regarding any changes made to its enforcement policies based upon subsequent discussions EPA and ADEQ have (as referenced above). • Incorporate or reference the recommendations in Finding 1-1 and 2-3.

Element 5 — Penalties	
Finding	**Area for state attention**
Summary	ADEQ obtained what appears to be a reasonable penalty for the one case available for review, but the file did not contain a description of how ADEQ arrived at the $1.3 million dollar penalty.
Explanation	The File Review indicated that there was not enough information in the file to determine if ADEQ has sufficient procedures in place to appropriately document both gravity and economic benefit in penalty calculations or whether penalty payments are being sufficiently documented, along with any difference between initial and final penalty. However, state penalties appear to include the penalty amount recommended under EPA's stationary source penalty policy and ADEQ stated they used the EPA penalty and included both a economic benefit

	and gravity portion. EPA commends ADEQ for obtaining a penalty over $1,000,000 for a source that had egregious CAA violations.
Relevant metrics	(see table below)
State Response	ADEQ generally follows EPA's Stationary Source Penalty Policy when calculating civil penalties. The primary driver in ADEQ's calculations is the economic benefit of non-compliance. While these cases are rare for Arizona, ADEQ has required sources to reconstruct affected facilities at a significant cost if a preconstruction permit would have required more significant controls. ADEQ is considering whether a state-specific air quality penalty policy is more appropriate to use. **ADEQ Recommendation:** By September 30, 2015, ADEQ will report to EPA whether a state-specific air quality penalty policy is required, or if a guidance memorandum describing the expectation of general adherence to EPA's Stationary Source Penalty Policy is most appropriate.
Recommendation	None required.

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
11a – Penalty Calculations Reviewed that Document Gravity and Economic Benefit	100%		0	1	0%
12a – Documentation of Rationale for Difference Between Initial and Final Penalty	100%		0	1	0%
12b – Penalties Collected	100%		1	1	100%

Appendix

[This section is optional. Content with relevance to the SRF review that could not be covered in the above sections should be included here. Regions may also include file selection lists and met

STATE REVIEW FRAMEWORK

Arizona

Resource Conservation and Recovery Act Implementation in Federal Fiscal Year 2013

U.S. Environmental Protection Agency
Region 9, San Francisco

Final Report
July 29, 2015

Executive Summary

Introduction

EPA Region 9 enforcement staff conducted a State Review Framework (SRF) enforcement program oversight review of the Arizona Department of Environmental Quality (ADEQ) in 2014.

EPA bases SRF findings on data and file review metrics, and conversations with program management and staff. EPA will track recommended actions from the review in the SRF Tracker and publish reports and recommendations on EPA's ECHO web site.

Areas of Strong Performance

- ADEQ's goal is to complete and issue all inspection reports within 30 days of the inspection. The goal is being achieved through the issuance of a Field Inspection Report. If no significant RCRA violations are observed during an inspection, a field inspection report is issued at the conclusion of the inspection. For inspections with violations warranting a Notice of Violation, the field inspection report is transmitted from the office via a Notice of Violation. Additionally, the Field Inspection Report contains all the elements required to document observed violations including process description(s), field observations, photographs, and photograph log if Notice of Violation issued. The process greatly increases return to compliance objectives set forth by the agency (e.g., reducing return to compliance from 120 days down to 60 days). ADEQ documents each Return to Compliance action completed by the facility in RCRAInfo. This includes any photographs, correspondences (including e-mails), training certifications and other documentation the facility submitted to ADEQ to demonstrate return to compliance with the identified violation(s).

Priority Issues to Address

The following are the top-priority issues affecting the state program's performance:

- No RCRA top-priority issues were identified.

Most Significant RCRA Subtitle C Program Issues

- All ADEQ formal enforcement actions are managed through the State Attorney General's Office. To address the inability to issue administrative orders, ADEQ has developed innovative compliance assistance and enforcement programs that achieves a high level of compliance with the regulated community. The ADEQ RCRA program consistently achieved timely and appropriate enforcement actions that returned violating facilities to compliance.

I. Background on the State Review Framework

The State Review Framework (SRF) is designed to ensure that EPA conducts nationally consistent oversight. It reviews the following local, state, and EPA compliance and enforcement programs:

- Clean Water Act National Pollutant Discharge Elimination System
- Clean Air Act Stationary Sources (Title V)
- Resource Conservation and Recovery Act Subtitle C

Reviews cover:

- **Data** — completeness, accuracy, and timeliness of data entry into national data systems

- **Inspections** — meeting inspection and coverage commitments, inspection report quality, and report timeliness

- **Violations** — identification of violations, determination of significant noncompliance (SNC) for the CWA and RCRA programs and high priority violators (HPV) for the CAA program, and accuracy of compliance determinations

- **Enforcement** — timeliness and appropriateness, returning facilities to compliance

- **Penalties** — calculation including gravity and economic benefit components, assessment, and collection

EPA conducts SRF reviews in three phases:

- Analyzing information from the national data systems in the form of data metrics
- Reviewing facility files and compiling file metrics
- Development of findings and recommendations

EPA builds consultation into the SRF to ensure that EPA and the state understand the causes of issues and agree, to the degree possible, on actions needed to address them. SRF reports capture the agreements developed during the review process in order to facilitate program improvements. EPA also uses the information in the reports to develop a better understanding of enforcement and compliance nationwide, and to identify issues that require a national response.

Reports provide factual information. They do not include determinations of overall program adequacy, nor are they used to compare or rank state programs.

Each state's programs are reviewed once every five years. The first round of SRF reviews began in FY 2004. The third round of reviews began in FY 2013 and will continue through FY 2017.

II. SRF Review Process

Review period: Federal Fiscal Year 2013

Key dates: The review was conducted at ADEQ June 2-5, 2014.

State and EPA key contacts for review: EPA's primary point of contact for the RCRA review is John Brock, (415)-972-3999. Other members of the EPA review team were John Schofield and Elizabeth Janes. The primary point of contact for ADEQ is Randall Matas.

III. SRF Findings

Findings represent EPA's conclusions regarding state performance and are based on findings made during the data and/or file reviews and may also be informed by:

- Annual data metric reviews conducted since the state's last SRF review
- Follow-up conversations with state agency personnel
- Review of previous SRF reports, Memoranda of Agreement, or other data sources
- Additional information collected to determine an issue's severity and root causes

There are three categories of findings:

Meets or Exceeds Expectations: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

Area for State Improvement: An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write up a finding of Area for State Improvement, regardless of other metric values pertaining to a particular element.

The relevant SRF metrics are listed within each finding. The following information is provided for each metric:

- **Metric ID Number and Description:** The metric's SRF identification number and a description of what the metric measures.
- **Natl Goal:** The national goal, if applicable, of the metric, or the CMS commitment that the state has made.
- **Natl Avg:** The national average across all states, territories, and the District of Columbia.
- **State N:** For metrics expressed as percentages, the numerator.
- **State D:** The denominator.
- **State % or #:** The percentage, or if the metric is expressed as a whole number, the count.

Resource Conservation and Recovery Act Findings

RCRA Element 1 — Data	
Finding 1-1	**Meets or Exceeds Expectations**
Summary	EPA's review of ADEQ inspection and enforcement files found that most of the minimum data requirements are being entered completely and accurately into the national data system. For return to compliance documentation, ADEQ has a well-developed process to ensure that accurate return to compliance information is entered into RCRAInfo.
Explanation	Only one data error was observed (Clean Harbors). All other data entries were observed to be accurate. For the one data entry, the inspection report completion date and the inspection report transmittal date was not entered into RCRAInfo. Due to the fact the one data entry was the only exception of the 29 files reviewed, this does not represent an area of concern.
Relevant metrics	(see table below)
State response	
Recommendation	No further action is recommended.

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
2b Complete and accurate entry of mandatory data	100%	N/A	28	29	96.6%

RCRA Element 2 — Inspections	
Finding 2-1	**Meets or Exceeds Expectations**
Summary	ADEQ completed core coverage for TSDs (two-year coverage) and LQGs (one-year coverage). ADEQ has requested and has been approved to implement an alternative Compliance Management

	Strategy for generators: substituting SQG inspections for LQGs inspections. This affects the LQGs inspection numbers for ADEQ during the 5-year cycle covered under this review. ADEQ is meeting its alternative CMS commitment.
Explanation	Element 2-1 is supported by Metrics 5a, 5b, and 5c. The OECA National Program Managers (NPM) Guidance outlines the core program inspection coverage for TSDs and LQGs. ADEQ met the 2-year TSD inspection requirement (Metric 5a). RCRAInfo identifies 8 operating TSD facilities within the State of Arizona. However, 1 of the TSD facilities is located on Tribal Land not under Arizona's jurisdiction. The correct number of operating TSD facilities that are inspected by ADEQ is 7 not 8 as listed in RCRAInfo. ADEQ inspected all of their 7 TSD facilities during the two year period.
Relevant metrics	

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
5a Two-year inspection coverage of operating TSDFs	100%	87.6%	7	7	100%
5b Annual inspection coverage of LQGs	20%	21%	43	214	20.1%
5c Five-year inspection coverage of LQGs	100%	66.6%	142	214	66.4%
5d Five-year inspection coverage of active SQGs	NA	11%	80	1174	6.8%

State response	
Recommendation	No further action is recommended.

RCRA Element 2 — Inspections	
Finding 2-2	**Meets or Exceeds Expectations**
Summary	ADEQ inspection reports were all complete with adequate supporting documentation (e.g., photographs, photograph logs). A majority of inspection reports were completed and entered into RCRAInfo in a timely manner.
Explanation	All inspection reports are prepared in a standardized format that includes but is not limited to the following report elements: facility

name, date of inspection, inspection participants, facility/process description, observations and files reviewed. At the conclusion of the facility inspection, Arizona provides the facility with a summary of the areas of concern, potential areas of non-compliance, and information required to be submitted to ADEQ to demonstrate that the facility has adequately addressed either the areas of concern or potential areas of non-compliance. The inspection summary provided to the facility is a component of the inspection/enforcement file. Once the inspection report is completed, report and report transmittal information is entered into RCRAInfo.

A general guideline of 45 days to complete an inspection report after the inspection was used for the purposes of this review. Arizona's goal is to complete the inspection report within 30 days. The report completion average for the period reviewed is 31 days. During the review period, ADEQ completed 82.8 of its inspection reports within 45 days of the inspection.

ADEQ has developed and implemented a field inspection report for each type of generator (i.e., LQG, SQG, CESQG). The field inspection report was rolled out for use in late FY2013. For this reason only one of the field inspection reports was review during this SRF. The field inspection report contains most of the elements of the standardized report described above. If there are no significant violations identified during the inspection, the field inspection report is completed and provided to the facility at the end of the inspection. If the facility wants copies of the photographs taken by ADEQ to document potential violations identified during the inspection, the facility must request a copy of the photographs at the conclusion of the inspection. When significant violations are identified during the inspection which warrants the issuance of a Notice of Violation, the field inspection report is issued from the office via a Notice of Violation and includes a photograph log. One of the files reviewed contained a field inspection report that was issued to the facility on the day of the inspection. The field inspection report program implementation has improved the timeliness of inspection reporting, so no state attention or improvement is necessary.

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
6a Inspection reports complete and sufficient to determine compliance	100%		29	29	100%
6b Timeliness of inspection report completion	100%		24	29	82.8%

State response

Recommendation	No further action is recommended.

RCRA Element 3 — Violations	
Finding 3-1	**Meets or Exceeds Expectations**
Summary	ADEQ makes accurate compliance determinations in the RCRA inspections reviewed.
Explanation	File Review Metric 7a assesses whether accurate compliance determinations were made based on the inspections. All 29 of the inspection report files reviewed during that had accurate compliance determinations. Metric 7b is a review indicator that evaluates the violation identification rate for inspection conducted during the year of review. In the data metric analysis, ADEQ violation identification rate for FY2013 was 77.3%, above the national average of 34.8%.
Relevant metrics	(see table below)
State response	
Recommendation	No further action is recommended.

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
7a Accurate compliance determinations	100%		29	29	100%
7b Violations found during inspections		34.8%	58	75	77.3%

RCRA Element 3 — Violations	
Finding 3-2	**Area for State Attention**
Summary	Based on the files reviewed, accurate SNC determinations were made by ADEQ.
Explanation	Only one of the selected files reviewed contained any violations that warranted a SNC determination. The SNC determination was made during the prior fiscal year (PAS Technologies).

	Metric 8a identifies the percent of facilities that receive a SNC designation in FY2013. ADEQ's SNC identification rate for FY2013 is 0%. This is well below the national average of 1.7%. ADEQ has developed and successfully implemented a generator compliance assistance program. EPA believes the low SNC identification rate is attributable to this program. There were no issues of concern identified in ADEQ's SNC determination policy or procedure. No significant SNC determination issues were identified in either the Round 1 or Round 2 SRFs. SNC identification is important part of an effective inspection and enforcement program. This information is used by the public to identify problematic facilities within their community. For this reason, EPA is identifying SNC determination as an area that ADEQ should pay particular attention to ensure that appropriate and timely SNC determination are made by the agency and entered into RCRAInfo.
Relevant metrics	(see table below)
State response	
Recommendation	No further action is recommended.

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
8a SNC identification rate	100%		0	75	0%
8c Appropriate SNC determinations	100%		1	1	100%

RCRA Element 4 — Enforcement	
Finding 4-1	**Meets or Exceeds Expectations**
Summary	ADEQ takes timely and appropriate enforcement actions.
Explanation	Metric 9a measures the enforcement responses that have returned or will return facilities with SNC or SV violations to compliance. All files reviewed (29 of 29) contained well documented returned to compliance information. Each return to compliance submission by the facility is entered into RCRAInfo by ADEQ. Metric 10b assesses the appropriateness of enforcement actions for SVs and SNCs. In the files reviewed, 100% of the facilities with violations (29 of 29) had an appropriate enforcement response.

Relevant metrics	(see table below)

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
9a Enforcement that returns violators to compliance	100%		29	29	100%
10b Appropriate enforcement taken to address violations	100%		29	29	100%

State response	
Recommendation	No further action is recommended.

RCRA Element 5 — Penalties	
Finding 5-1	**Meets or Exceeds Expectations**
Summary	ADEQ's penalties consider and includes a gravity component and economic benefit as part of the penalty calculation.
Explanation	Only 1 penalty case file was reviewed (PAS Technologies) as a part of this SRF. A well detailed penalty calculation and justification memorandum is contained in the confidential enforcement file. The penalty calculation process includes gravity component, economic benefit component and any adjustments (e.g., history of non-compliance). The file also includes documentation supporting that the penalty has been collected (i.e., copy of the check).

Metric ID Number and Description	Natl Goal	Natl Avg	State N	State D	State % or #
11a Penalty calculations include gravity and economic benefit	100%	N/A	1	1	100%
12a Documentation on difference between initial and final penalty	100%	N/A	1	1	100%
12b Penalties collected	100%	N/A	1	1	100%

State response	
Recommendation	No further action is recommended.

Appendix

ADEQ should ensure they maintain their FTE commitment in order to make sure they continue to achieve their inspection numbers.

Allowing ADEQ to substitute SQG inspections for LQGs in accordance with the RCRA LQG Flexibility Project allow them to re-direct resources to increase inspections at facilities that potentially pose a serious risk to human health and the environment.

Appendix

[This section is optional. Content with relevance to the SRF review that could not be covered in the above sections should be included here. Regions may also include file selection lists and metric tables at their discretion. Delete this page if i

Appendix G. Nondiscrimination Program Plan, January 2017

Arizona Department of Environmental Quality
Civil Rights Program Policy

October 2016

Rev. August 2019

Policy of Nondiscrimination

The Arizona Department of Environmental Quality (ADEQ) is committed to ensuring that no person is excluded from participation in, denied the benefits of, or subjected to discrimination under any program, activity or service that it provides on the basis of race, color, national origin, or on the basis of sex or a disability, or on the basis of age, in violation of Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title 40 Code of Federal Regulations Part 7, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. ADEQ will not tolerate intimidation, threats, coercion, or discrimination against any individual or group. This policy establishes a framework for taking reasonable measures to ensure access to all services provided by ADEQ for all Arizona citizens and establishes procedures whereby the department will receive and investigate allegations of discrimination.

ADEQ's grievance procedures and complaint processing are included in the Director's Office Policy Statement, Nondiscrimination Policy for Programs, Activities and Services and Grievance Procedures (**Attachment A)**.

Recipients of Federal Assistance: Title VI Requirements; ADEQ Obligation to Provide Access

Title VI of the Civil Rights Act of 1964 is the overarching civil rights law that prohibits discrimination based on race, color, or national origin, in any program, service or activity that receives federal assistance. Specifically, Title VI assures that "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under any program or activity receiving federal assistance." Title VI has been broadened and supplemented by related statutes, regulations and executive orders:

- Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in any education or training program receiving federal financial assistance, with a limited number of defined exceptions;

- Section 504 of the Rehabilitation Act of 1973 (Section 504), which forbids discrimination on the basis of an individual's disability by all federal agencies and in all federally funded activities;

- The Age Discrimination Act of 1975, as amended, which prohibits discrimination in federally supported activities on the basis of age.

Further, Executive Order 13166, *Improving Access to Services with Persons with Limited English Proficiency* (2000) requires that persons with limited English proficiency (LEP) should have meaningful access to federally conducted and federally funded programs and activities, including services and benefits.

ADEQ Nondiscrimination Program

A. Overview, Goals and Principles

ADEQ is actively engaged in Title VI activities as a recipient of federal assistance from the Environmental Protection Agency (EPA). ADEQ will not exclude an individual on the basis of a prohibited discriminatory reason from participation in or from the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under its programs. Individuals may not be subjected to criteria or methods of administration which cause adverse impact because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program because of race, color or national origin. ADEQ will not tolerate intimidation, threats, coercion, or discrimination against any individual or group. Further, ADEQ must provide access to individuals with limited ability to speak, write, or understand the English language and to those with disabilities.

In order to provide services that are responsive to the needs and priorities of Arizona's diverse population, it is essential to have a process in place that effectively engages the public, fully integrates their feedback, and results in decisions that are protective of human health and the environment. The goal of the ADEQ Nondiscrimination Program is to ensure all people have a meaningful role in processes associated with the delivery of ADEQ services. This Program outlines the roles, method of administration, and analysis that supports equity in all of ADEQ's programs.

Based on federal guidance, the components of the ADEQ Program include:

- A notice of nondiscrimination as required by Title 40 CFR 7.95;
- Grievance procedures for complaints filed under the federal nondiscrimination statutes;
- Identification of an ADEQ Environmental Justice/Title VI Nondiscrimination Coordinator and his/her role;
- An assessment of ADEQ's obligation to provide access to LEP and disabled persons;
- Public Participation Procedures.

B. ADEQ Nondiscrimination Program Plan

1. Notice of Nondiscrimination

ADEQ's Notice of Nondiscrimination (**Attachment B**) is prominently and permanently posted in ADEQ's main office in Phoenix, its Southern Regional Office in Tucson, and its Vehicle Emission Inspections Stations in Maricopa County and Pima County, and on the ADEQ website. Notice is provided in both English and Spanish and describes the procedures to file a complaint and how to contact the ADEQ Environmental Justice/Title VI Nondiscrimination Program Coordinator for assistance.

2. Grievance Procedures

ADEQ's Grievance Procedures are posted on ADEQ's website and explain the process by which any person may file a complaint (**Attachment C**). Further, the process by which complaints will be investigated and how complainants will be informed (in writing) of the progress and disposition of their complaint is also described. Finally, contact information for ADEQ's Environmental Justice/Title VI Nondiscrimination Program Coordinator is provided.

3. Role of ADEQ's Nondiscrimination Program Coordinator

ADEQ's Environmental Justice/Title VI Nondiscrimination Program Coordinator ensures department compliance with federal non-discrimination statutes and:

- Ensures information regarding ADEQ's Nondiscrimination Program is available both internally and externally; Maintains public notices of nondiscrimination, and procedures for, receipt and processing of complaints;
- Receives and logs in complaints;
- Investigates complaints in accordance with ADEQ's grievance procedures to assure prompt and fair resolution;
- Informs complainants of the progress and disposition of their complaints;
- Tracks and reviews complaints received and their dispositions;
- Maintains ADEQ's compliance records;
- Trains department staff on ADEQ's Nondiscrimination Program and procedures;
- Provides written updates to complainants on the progress of investigations;
- Periodically reviews the efficacy of ADEQ's Nondiscrimination Program.

Obligation to Provide Access: Persons with Limited English Proficiency and/or Disabilities

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English can be Limited English Proficient (LEP) and may be entitled to language assistance with respect to services provided by recipients of federal assistance.

As directed by Executive Order 13166, EPA published guidance to financial assistance recipients regarding Title VI prohibition against national origin discrimination affecting LEP persons. Recipients are required to take reasonable steps to reduce language barriers that can preclude meaningful access to department programs and activities by LEP persons.

Recipients of federal assistance will also provide for meaningful access to department programs and activities by disabled persons. Disabled persons have a physical impairment (hearing, mobility, vision) or mental impairment that substantially limits one or more major life activities including walking, talking, hearing, seeing, breathing, learning, performing manual tasks and caring for oneself.

While it is true that determining precisely what steps are reasonable to ensure access for LEP and disabled persons is fact-dependent, development of a public participation plan begins with a clear understanding of the frequency and distribution of LEP and disabled populations throughout Arizona.

Limited English Proficiency Persons

Federal guidance generally describes how recipients of federal assistance determine the extent of their obligation to provide LEP services. Four factors should be considered:

1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program; an estimated 8.9% of Arizona's population speaks English less than "very well" according to the U.S. Census Bureau American FactFinder from the Language

Spoken at Home 2015 American Community Survey. About 15% of the Arizona population 5 years and older speak Spanish (**Attachment D**).

2) The frequency with which LEP individuals come in contact with the program; as ADEQ permits facilities and administers programs county-wide, LEP persons are a significant percentage of the individuals who come into contact with the program.

3) The nature and importance of the program, activity or service provided by the program to people's lives; the permitting programs ADEQ administers and plans ADEQ develops are directly impactful to protecting the health and welfare of all its citizens.

4) The resources available to the recipient and costs.

ADEQ has the resources to provide LEP services as identified in the Public Participation Procedures below. Since Spanish speakers are the major LEP language group in Arizona, ADEQ's efforts primarily focus on ensuring key materials and services are available in both English and Spanish.

Disabled Persons

An estimated 12.9% of Arizona's Civilian Non-Institutionalized population is disabled according to the U.S. Census Bureau American FactFinder Disability Characteristics from the 2015 American Community Survey (**Attachment D**).

Public Participation Procedures

ADEQ seeks public participation and involvement in multiple programs. Though the vast majority of public involvement opportunities at ADEQ arise during the processing of permits and development of certain plans, public notice and participation is an important element of all ADEQ programs. Effective public involvement is a required component of the decision making process (and required by ADEQ rules) and is intended to help members of the public understand and assess how environmental programs affect their communities.

In order for public involvement to be meaningful, it requires informing, consulting and working with potentially affected communities at various stages of the decision making process in order to understand and address concerns. ADEQ strives to provide for meaningful public involvement in all of its programs, no matter the location of the program in the State of Arizona or the community potentially impacted.

a. Public Participation Required by ADEQ Rules

Under ADEQ rules[1] a series of steps are required before taking action. These steps include public notice and opportunity for public comment. Additionally, for certain plans and permit actions listed below, notice of the opportunity for a hearing is required:

- Issuing, denying or renewing a permit;
- Modifying a permit;
- Revoking and reissuing or reopening a permit;

[1]*Arizona Administrative Code Title 18, Chapter 1 as well as individual program requirements.*

- Issuing a conditional order or permit;
- Granting a variance from a general permit.

Notice of proposed permits or permit revisions or proposed plans must be published in newspapers of general circulation in the location potentially impacted by the permit or plan and must include:

- Name and address of the affected facility;
- Activity(ies) involved in the permit action;
- Instructions on how, where, and by when comments are to be submitted;
- Locations where copies of the document subject to ADEQ's decision may be obtained.

b. Public Participation: LEP/Disabled Persons

In addition to those public involvement requirements described in rules, ADEQ supplements and strengthens public involvement processes to ensure access to all people and ensure that accommodation is available to facilitate the participation of those persons with English language proficiency and/or disability.

ADEQ provides appropriate auxiliary aids and services (including qualified interpreters) to LEP persons, disabled persons who are deaf or hard of hearing and other individuals upon request at no cost to ensure effective communication and an equal opportunity to participate fully in the decision making processes.

Further, as the majority of LEP households in the State of Arizona are proficient in Spanish, significant resources are directed at ensuring the availability of key materials and services in both English and Spanish, subject to requirements of Article 28 of the Arizona Constitution, including:

- Compliance/Enforcement brochures and flyers
- Department main phone line accommodations for Spanish speakers
- Phone line menu options in Spanish
- Access to Spanish speaking representatives
- Voicemail options in Spanish
- Compliance training schedule information in Spanish
- No burn line info and emergency line information in Spanish
- Communications Office staff who respond to Spanish media calls
- Link to Maricopa County CleanAirMakeMore.com/Español Spanish website
- Link to Maricopa County Dust control training courses offered in Spanish online and in person
- Link to Maricopa County No Burn Campaign materials offered in Spanish:
    - Link to TV Public Service Announcements in Spanish
    - Link to Radio advertisements in Spanish
    - Link to Frequently Asked Questions in Spanish
    - Link to Resident door hangers in Spanish
    - Link to Newspaper articles and press releases in Spanish

ADEQ is also able to accommodate the needs of other LEP (non-Spanish speaking) persons through specialty contracts for translation services available through the Arizona Department of Administration.

The development and distribution of public notices and planning for public meetings or hearings regarding ADEQ actions will consider the LEP and disabled population density in the area most impacted by the ADEQ action or program. Staff engaged in developing public notices and planning of public meetings will consult U.S. Census Bureau and Arizona Office of Economic Opportunity data sources regarding the geographic distribution of LEP and disabled populations within Arizona. ADEQ's facilities and other facilities utilized by ADEQ will be physically accessible to individuals with disabilities. When appropriate, ADEQ will provide for simultaneous oral interpretation of live proceedings

Further, ADEQ public notices will include the following text:

> "ADEQ will take reasonable measures to provide access to department services to individuals with limited ability to speak, write, or understand English and/or to those with disabilities. Requests for language interpretation services or for disability accommodations must be made at least 48 hours in advance by contacting: [Department Contact Information]"
>
> "ADEQ tomará medidas razonables para proveer acceso a los servicios del departamento para personas con capacidad limitada para hablar, escribir o entender Inglés y / o para las personas con discapacidad. Las solicitudes de servicios de interpretación del lenguaje o de alojamiento de discapacidad deben hacerse por lo menos 48 horas de antelación poniéndose en contacto con: [Departamento de Información de Contacto]"

Attachment A: ADEQ Grievance Procedures

<table>
<tr><td rowspan="3"> </td><td>Director's Office
Policy Statement</td><td>
Page 1 of 6</td></tr>
<tr><td rowspan="2">Nondiscrimination Policy for Programs, Activities and Services and Grievance Procedures</td><td>Policy No.
0301.2019</td></tr>
<tr><td>Effective:
8/2/2019</td></tr>
</table>

1.0 Purpose

The purpose of this policy is to ensure compliance with Title VI of the Civil Rights Act of 1964.

ADEQ is committed to ensuring that no person is excluded from participation in, denied the benefits of, or subjected to discrimination under any program, activity or service that it provides. ADEQ will not tolerate intimidation, threats, coercion, or discrimination against any individual or group. This policy establishes a framework for taking reasonable measures to ensure access to all services provided by the department for all citizens in the State of Arizona and establishes procedures whereby the department will receive and investigate allegations of discrimination.

Title VI of the Civil Rights Act of 1964 is the overarching civil rights law that prohibits discrimination based on race, color, or national origin, in any program, service or activity that receives federal assistance. Specifically, Title VI assures that “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under any program or activity receiving federal assistance.” Title VI has been broadened and supplemented by related statutes, regulations and executive orders:

- Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in any education or training program receiving federal financial assistance, with a limited number of defined exceptions;
- Section 504 of the Rehabilitation Act of 1973 (Section 504), which forbids discrimination on the basis of an individual's disability by all federal agencies and in all federally funded activities;
- The Age Discrimination Act of 1975, as amended, which prohibits discrimination in federally supported activities on the basis of age.
- Executive Order 13166, *Improving Access to Services with Persons with Limited English Proficiency* (2000) requires that persons with limited English proficiency (LEP) should have meaningful access to federally conducted and federally funded programs and activities, including services and benefits.

ADEQ is actively engaged in Title VI activities as a recipient of federal assistance form the Environmental Protection Agency (EPA).

2.0 Definitions

Disability – Hearing, vision, cognitive, ambulatory, self-care, and/or independent living difficulty.

Limited English Proficient (LEP) persons – Individuals who do not speak English well as their primary language and who have limited ability to read, write, speak or understand English.

Environmental Justice/Title VI Nondiscrimination Program Coordinator (Coordinator) – ADEQ representative who ensures compliance with federal non-discrimination statutes.

3.0 Policy Statement

Discrimination Prohibited: ADEQ will not exclude an individual on the basis of a prohibited discriminatory reason from participation in or from the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under its programs regardless of the funding source for the program. Individuals may not be subjected to criteria or methods of administration which cause adverse impact because of their race, color, or national origin, or age or disability, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program because of race, color or national origin or age or disability.

Intimidation and Retaliation Prohibited: ADEQ will not tolerate intimidation, threats, coercion, or discrimination against any individual or group, either:

a. For the purpose of interfering with any right or privilege guaranteed under law or regulations, or

b. Because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing or has opposed any ADEQ action or decision.

Access to ADEQ Programs: ADEQ will take reasonable measures to provide access to ADEQ services to individuals with limited ability to speak, write, or understand English and/or to those with disabilities.

3.1 Procedures

3.1.1 **Public Notice:** Public notice of ADEQ's Nondiscrimination Plan will be prominently posted in ADEQ offices and on ADEQ's web site.

3.1.2 **Public Notice/Meeting Planning:** The development and distribution of public notices and planning for public meetings or hearings regarding ADEQ actions will consider the LEP and disabled population density in the area most impacted by the ADEQ action or program. Staff engaged in developing public notices and planning of public meetings will consult U.S. Census Bureau and Arizona Office of Economic Opportunity data sources regarding the geographic distribution of LEP and disabled populations within the State of Arizona when planning public meetings and hearings.

3.1.3 **Public Notice Text**: ADEQ notices will include the following text:

"ADEQ will take reasonable measures to provide access to department services to individuals with limited ability to speak, write, or understand English and/or to those with disabilities. Requests for language interpretation services or for disability accommodations must be made at least 48 hours in advance by contacting: Environmental Justice/Title VI Nondiscrimination Program Coordinator at 602-771-4322 or idb@azdeq.gov"

"ADEQ tomará medidas razonables para proveer acceso a los servicios del departamento para personas con capacidad limitada para hablar, escribir o entender Inglés y / o para las personas con discapacidad. Las solicitudes de servicios de interpretación del lenguaje o de alojamiento de discapacidad deben hacerse por lo menos 48 horas de antelación poniéndose en contacto con: Environmental Justice/Title VI Nondiscrimination Program Coordinator at 602-771-4322 or idb@azdeq.gov"

3.1.4 **Role of Environmental Justice/Title VI Nondiscrimination Program Coordinator**:

3.1.4.1 Ensures information regarding ADEQ's Nondiscrimination Program is internally and externally available

3.1.4.2 Posts and maintains public notice of, and procedures for, receipt and processing of complaints

3.1.4.3 Tracks and reviews complaints received through their disposition, in compliance with 40 CFR § 7.85, to enable completion and submittal of EPA Form 4700-4 with grant applications. Provides quarterly written status updates on pending complaints to the Office of Administrative Counsel and Human Potential Office.

3.1.4.4 Trains department staff on ADEQ's Nondiscrimination Program Policy and procedures

3.1.4.5 Provides written updates to complainants on the progress of investigations

3.1.4.6 Recommends dispositions to the ADEQ Director.

3.1.4.7 Periodically reviews the efficacy of ADEQ's Nondiscrimination Program Policy and recommends timely revisions to the Executive Leadership Team.

3.1.5 **Grievance Procedures and Complaint Processing**:

3.1.5.1 If someone believes they have suffered from prohibited discrimination under an ADEQ program, they may contact the ADEQ Environmental Justice/Title VI Nondiscrimination Program Coordinator [Coordinator] to seek informal resolution. The Coordinator may schedule an interview with the complainant. If the alleged discrimination concerns employment at ADEQ, the Coordinator will refer the complainant or the complaint to the ADEQ Human Potential Office.

3.1.5.2 If complaints about ADEQ programs, activities or services cannot be resolved informally, the complainant may file a complaint with the ADEQ Coordinator. The complaint must be filed within 180 days after the alleged discrimination, unless ADEQ waives the time limit for good cause. Complainants may submit a written or verbal complaint to the Coordinator. Complaints must include the complainant's name, the nature of the complaint, the date(s) of the alleged discrimination, requested action, and contact information. Complaint forms are available in English and Spanish (**Attachment C**)

3.1.5.3 The Coordinator will review the complaint and may solicit additional information from the complainant as needed. ADEQ will make initial contact within 5 days after receipt of the complaint. If additional information necessary to confirm the prohibited discrimination is requested and not received within 30 days, the case may be closed. The case may also be closed if the complainant no longer wishes to pursue their case and submits a written request to the Coordinator to close the case.

3.1.5.4 The Coordinator will maintain a complaint log containing the name and address of the complainant, date(s) of the alleged prohibited discrimination, nature of the complaint, date of submission of the complaint, date of the Coordinator's request for additional information necessary to confirm the complaint and date of its receipt, results of the investigation and disposition of the complaint.

3.1.5.5 The Coordinator will make a preliminary recommendation for a prompt and fair resolution to the Administrative Counsel of either dismissal of the complaint or of a finding of prohibited discrimination and a proposed remedy. The Coordinator and the Administrative Counsel shall consult with the Attorney General's Office and may conduct additional investigation before making a recommendation to the ADEQ Director.

3.1.5.6 If after consulting the Attorney General's Office, the Coordinator and the Administrative Counsel will recommend to the Director dismissal of a complaint if the investigation reveals no prohibited discrimination. If the Director agrees, the Coordinator will notify the complainant timely in writing of the dismissal within 10 days.

3.1.5.7 If after consulting with the Attorney General's Office, the Coordinator and the Administrative Counsel will recommend to the Director a finding of prohibited discrimination and a proposed remedy for a complaint if the investigation reveals prohibited discrimination. If the Director agrees, the Coordinator will notify the complainant timely in writing of the finding and the proposed remedy within 10 days.

3.1.5.8 The Coordinator or the Administrative Counsel may also recommend to the Director changes to this policy or to ADEQ

programs, activities and services as a result of a complaint investigation.

3.1.5.9 If the complaint is outside the jurisdiction of ADEQ, within two weeks after receipt of the complaint the Coordinator will notify the complainant of ADEQ's lack of jurisdiction to address the complaint and of the name and contact information for the appropriate agency or tribe with jurisdiction, if known to ADEQ.

3.1.6 Recordkeeping; Records including investigative files shall be kept for a minimum of three years after disposition of the complaint.

4.0 Audience

All recipients of ADEQ programs, activities and services

All ADEQ employees

5.0 Policy Owner (Position Responsible for Implementing & Maintaining the Policy – Title/Unit/Section/Division)

Environmental Justice/Title VI Nondiscrimination Coordinator

6.0 Communication & Training

Environmental Justice/Title VI Nondiscrimination Coordinator will develop, conduct and annually review training needs.

7.0 Compliance & Audit Plan

Environmental Justice/Title VI Nondiscrimination Coordinator will review the complaint files and data annually in conjunction with the federal grant cycle.

8.0 Review & Revision

Environmental Justice/Title VI Nondiscrimination Coordinator will review the complaint files and data annually in conjunction with the federal grant cycle.

9.0 Additional Documentation Templates and Checklists for the Final Policy

Complaint Form in English and Spanish

10.0 Approved by:

Title	Name	Signature	Date
ADEQ Director, if necessary	Misael Cabrera	[signature]	8/30/19
Affected Division Director(s)	Ian Bingham	[signature]	09/03/19
Administrative Counsel as to form	Edwin Slade	[signature]	8/12/19

11.0 Historical Note

[Describes the changes or updates to a policy, which serves as a reference for the reader to understand any past changes.]

Date	Number, Name, and Issue Date of Previous Version	Replaces Listed Sections/Entire Document

Attachment B: ADEQ Notice of Non-Discrimination

NOTICE OF NON-DISCRIMINATION

The Arizona Department of Environmental Quality does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of its programs or activities, as required by applicable laws and regulations.

Ian Bingham, Environmental Justice/Title VI Non-Discrimination Coordinator, is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

If you have any questions about this notice or any of ADEQ's non-discrimination programs, policies or procedures, you may contact:

Ian Bingham, Environmental Justice/Title VI Non-Discrimination Coordinator
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007
602-771-4322
idb@azdeq.gov

If you believe that you have been discriminated against with respect to an ADEQ program or activity, you may contact the Environmental Justice/Non-Discrimination Coordinator identified above or visit our website at www.azdeq.gov to learn how and where to file a complaint of discrimination.

Attachment C: ADEQ Title VI Complaint Form

To access the Title VI Discrimination Complaint Form, visit: http://static.azdeq.gov/legal/civilrightsform.pdf

ADEQ Arizona Department of Environmental Quality

Title VI Discrimination Complaint Form

Name: ____________________

Address: ____________________

City: __________ **State:** __________ **Zip:** __________

Phone Number: ____________________

Alternate Phone Number: ____________________

Person discriminated against *(if someone other than complainant listed above)*

Name: ____________________

Address: ____________________

City: __________ **State:** __________ **Zip:** __________

Phone Number: ____________________

Alternate Phone Number: ____________________

Which of the following best describes the reason you believe discrimination took place?

- ☐ Race __________
- ☐ Color __________
- ☐ Sex __________
- ☐ Age __________
- ☐ Disability __________
- ☐ National Original __________
- ☐ Low Income Status __________
- ☐ Limited English Proficiency (LEP) __________

On what date(s) did the alleged discrimination take place?

Where did the alleged discrimination take place?

What is the name and title of the person(s) who you believe discriminated against you (if known)?

To access the Title VI Discrimination Complaint Form, visit: http://static.azdeq.gov/legal/civilrightsform.pdf

Describe the alleged discrimination. Explain what happened and who you believe was responsible. *(If more space is needed, attach additional documents.)*

List names and contact information of persons who may have knowledge of the alleged discrimination.

If you have filed this complaint with any other federal, state or local agency, or with any federal or state court, check all that apply and include the filed complainant information.

- ☐ Federal Agency
- ☐ State Agency
- ☐ Local Agency
- ☐ Federal Court
- ☐ State Court

Name: ____________________

Address: ____________________

City: ____________ **State:** ________ **Zip:** ________

Phone Number: ____________________

Alternate Phone Number: ____________________

Please sign below. You may attach any written material or other information relevant to your complaint.

Complainant Signature	**Date**	**Number of attachments**

Submit Form:

By Mail: ☐ **Or** ☐ **By Email:** idb@azdeq.gov

ADEQ Main Office
Att: Nondiscrimination Program Coordinator
1110 W. Washington Street
Phoenix, AZ 85007

Attachment D: Arizona Population Data

1. Household Proportions with Limited English-Speaking Ability
2. Civilian Non-institutionalized Population Proportions with a Disability

The following information can be found by searching census data for Arizona at: factfinder.census.gov.

S1810 DISABILITY CHARACTERISTICS

2015 American Community Survey 1-Year Estimates

Supporting documentation on code lists, subject definitions, data accuracy, and statistical testing can be found on the American Community Survey website in the Data and Documentation section.

Sample size and data quality measures (including coverage rates, allocation rates, and response rates) can be found on the American Community Survey website in the Methodology section.

Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, it is the Census Bureau's Population Estimates Program that produces and disseminates the official estimates of the population for the nation, states, counties, cities and towns and estimates of housing units for states and counties.

Subject	Arizona				
	Total		With a disability		Percent with a disability
	Estimate	Margin of Error	Estimate	Margin of Error	Estimate
Total civilian noninstitutionalized population	6,719,354	+/-1,844	863,924	+/-15,727	12.9%
SEX					
Male	3,293,746	+/-3,484	426,924	+/-9,610	13.0%
Female	3,425,608	+/-3,038	437,000	+/-10,167	12.8%
RACE AND HISPANIC OR LATINO ORIGIN					
White alone	5,206,903	+/-23,503	701,360	+/-14,162	13.5%
Black or African American alone	288,930	+/-6,639	37,010	+/-2,929	12.8%
American Indian and Alaska Native alone	302,665	+/-7,586	39,480	+/-2,537	13.0%
Asian alone	215,571	+/-5,390	16,179	+/-1,914	7.5%
Native Hawaiian and Other Pacific Islander alone	10,641	+/-1,249	982	+/-352	9.2%
Some other race alone	475,789	+/-21,452	45,798	+/-4,132	9.6%
Two or more races	218,855	+/-10,741	23,115	+/-2,684	10.6%
White alone, not Hispanic or Latino	3,753,185	+/-3,491	572,024	+/-12,031	15.2%
Hispanic or Latino (of any race)	2,060,468	+/-2,688	190,503	+/-8,074	9.2%
AGE					
Under 5 years	429,438	+/-1,321	3,654	+/-1,085	0.9%
5 to 17 years	1,189,955	+/-1,341	55,230	+/-4,269	4.6%
18 to 34 years	1,534,572	+/-3,388	90,790	+/-4,703	5.9%
35 to 64 years	2,457,502	+/-3,996	327,272	+/-9,632	13.3%
65 to 74 years	648,048	+/-2,175	163,375	+/-4,879	25.2%
75 years and over	459,839	+/-1,899	223,603	+/-5,270	48.6%
DISABILITY TYPE BY DETAILED AGE					
With a hearing difficulty	(X)	(X)	281,341	+/-7,984	4.2%
Population under 18 years	1,619,393	+/-860	12,800	+/-1,972	0.8%
Population under 5 years	429,438	+/-1,321	2,401	+/-927	0.6%
Population 5 to 17 years	1,189,955	+/-1,341	10,399	+/-1,683	0.9%
Population 18 to 64 years	3,992,074	+/-2,837	84,563	+/-5,016	2.1%
Population 18 to 34 years	1,534,572	+/-3,388	14,322	+/-2,474	0.9%
Population 35 to 64 years	2,457,502	+/-3,996	70,241	+/-4,541	2.9%

Subject	Arizona				
	Total		With a disability		Percent with a disability
	Estimate	Margin of Error	Estimate	Margin of Error	Estimate
Population 65 years and over	1,107,887	+/-1,814	183,978	+/-6,408	16.6%
Population 65 to 74 years	648,048	+/-2,175	69,305	+/-3,459	10.7%
Population 75 years and over	459,839	+/-1,899	114,673	+/-5,632	24.9%
With a vision difficulty	(X)	(X)	163,987	+/-7,252	2.4%
Population under 18 years	1,619,393	+/-860	13,704	+/-2,220	0.8%
Population under 5 years	429,438	+/-1,321	2,686	+/-912	0.6%
Population 5 to 17 years	1,189,955	+/-1,341	11,018	+/-2,022	0.9%
Population 18 to 64 years	3,992,074	+/-2,837	75,073	+/-4,709	1.9%
Population 18 to 34 years	1,534,572	+/-3,388	15,114	+/-1,936	1.0%
Population 35 to 64 years	2,457,502	+/-3,996	59,959	+/-4,017	2.4%
Population 65 years and over	1,107,887	+/-1,814	75,210	+/-4,317	6.8%
Population 65 to 74 years	648,048	+/-2,175	28,609	+/-2,672	4.4%
Population 75 years and over	459,839	+/-1,899	46,601	+/-3,382	10.1%
With a cognitive difficulty	(X)	(X)	306,601	+/-9,660	4.9%
Population under 18 years	1,189,955	+/-1,341	39,098	+/-3,345	3.3%
Population 18 to 64 years	3,992,074	+/-2,837	174,466	+/-6,951	4.4%
Population 18 to 34 years	1,534,572	+/-3,388	58,126	+/-3,533	3.8%
Population 35 to 64 years	2,457,502	+/-3,996	116,340	+/-5,806	4.7%
Population 65 years and over	1,107,887	+/-1,814	93,037	+/-4,636	8.4%
Population 65 to 74 years	648,048	+/-2,175	30,170	+/-2,793	4.7%
Population 75 years and over	459,839	+/-1,899	62,867	+/-3,947	13.7%
With an ambulatory difficulty	(X)	(X)	446,552	+/-10,362	7.1%
Population under 18 years	1,189,955	+/-1,341	6,909	+/-1,324	0.6%
Population 18 to 64 years	3,992,074	+/-2,837	205,180	+/-8,012	5.1%
Population 18 to 34 years	1,534,572	+/-3,388	19,545	+/-2,434	1.3%
Population 35 to 64 years	2,457,502	+/-3,996	185,635	+/-7,964	7.6%
Population 65 years and over	1,107,887	+/-1,814	234,463	+/-6,694	21.2%
Population 65 to 74 years	648,048	+/-2,175	95,133	+/-4,539	14.7%
Population 75 years and over	459,839	+/-1,899	139,330	+/-4,641	30.3%
With a self-care difficulty	(X)	(X)	157,610	+/-5,871	2.5%
Population under 18 years	1,189,955	+/-1,341	11,194	+/-1,840	0.9%
Population 18 to 64 years	3,992,074	+/-2,837	68,287	+/-3,969	1.7%
Population 18 to 34 years	1,534,572	+/-3,388	10,311	+/-1,682	0.7%
Population 35 to 64 years	2,457,502	+/-3,996	57,976	+/-4,033	2.4%
Population 65 years and over	1,107,887	+/-1,814	78,129	+/-4,344	7.1%
Population 65 to 74 years	648,048	+/-2,175	23,469	+/-2,386	3.6%
Population 75 years and over	459,839	+/-1,899	54,660	+/-3,578	11.9%
With an independent living difficulty	(X)	(X)	288,246	+/-8,154	5.7%
Population 18 to 64 years	3,992,074	+/-2,837	138,978	+/-6,434	3.5%
Population 18 to 34 years	1,534,572	+/-3,388	33,258	+/-2,672	2.2%
Population 35 to 64 years	2,457,502	+/-3,996	105,720	+/-5,575	4.3%
Population 65 years and over	1,107,887	+/-1,814	149,268	+/-5,622	13.5%
Population 65 to 74 years	648,048	+/-2,175	42,992	+/-2,938	6.6%
Population 75 years and over	459,839	+/-1,899	106,276	+/-4,872	23.1%

Subject	Arizona
	Percent with a disability
	Margin of Error
Total civilian noninstitutionalized population	+/-0.2
SEX	
Male	+/-0.3
Female	+/-0.3
RACE AND HISPANIC OR LATINO ORIGIN	
White alone	+/-0.3
Black or African American alone	+/-1.0
American Indian and Alaska Native alone	+/-0.8
Asian alone	+/-0.9
Native Hawaiian and Other Pacific Islander alone	+/-3.6
Some other race alone	+/-0.7
Two or more races	+/-1.1
White alone, not Hispanic or Latino	+/-0.3
Hispanic or Latino (of any race)	+/-0.4
AGE	
Under 5 years	+/-0.3
5 to 17 years	+/-0.4
18 to 34 years	+/-0.3
35 to 64 years	+/-0.4
65 to 74 years	+/-0.8
75 years and over	+/-1.2
DISABILITY TYPE BY DETAILED AGE	
With a hearing difficulty	+/-0.1
Population under 18 years	+/-0.1
Population under 5 years	+/-0.2
Population 5 to 17 years	+/-0.1
Population 18 to 64 years	+/-0.1
Population 18 to 34 years	+/-0.2
Population 35 to 64 years	+/-0.2
Population 65 years and over	+/-0.6
Population 65 to 74 years	+/-0.5
Population 75 years and over	+/-1.2
With a vision difficulty	+/-0.1
Population under 18 years	+/-0.1
Population under 5 years	+/-0.2
Population 5 to 17 years	+/-0.2
Population 18 to 64 years	+/-0.1
Population 18 to 34 years	+/-0.1
Population 35 to 64 years	+/-0.2
Population 65 years and over	+/-0.4
Population 65 to 74 years	+/-0.4
Population 75 years and over	+/-0.7
With a cognitive difficulty	+/-0.2
Population under 18 years	+/-0.3
Population 18 to 64 years	+/-0.2
Population 18 to 34 years	+/-0.2
Population 35 to 64 years	+/-0.2
Population 65 years and over	+/-0.4
Population 65 to 74 years	+/-0.4
Population 75 years and over	+/-0.9
With an ambulatory difficulty	+/-0.2
Population under 18 years	+/-0.1
Population 18 to 64 years	+/-0.2
Population 18 to 34 years	+/-0.2

Subject	Arizona
	Percent with a disability
	Margin of Error
Population 35 to 64 years	+/-0.3
Population 65 years and over	+/-0.6
Population 65 to 74 years	+/-0.7
Population 75 years and over	+/-1.0
With a self-care difficulty	+/-0.1
Population under 18 years	+/-0.2
Population 18 to 64 years	+/-0.1
Population 18 to 34 years	+/-0.1
Population 35 to 64 years	+/-0.2
Population 65 years and over	+/-0.4
Population 65 to 74 years	+/-0.4
Population 75 years and over	+/-0.8
With an independent living difficulty	+/-0.2
Population 18 to 64 years	+/-0.2
Population 18 to 34 years	+/-0.2
Population 35 to 64 years	+/-0.2
Population 65 years and over	+/-0.5
Population 65 to 74 years	+/-0.5
Population 75 years and over	+/-1.1

Data are based on a sample and are subject to sampling variability. The degree of uncertainty for an estimate arising from sampling variability is represented through the use of a margin of error. The value shown here is the 90 percent margin of error. The margin of error can be interpreted roughly as providing a 90 percent probability that the interval defined by the estimate minus the margin of error and the estimate plus the margin of error (the lower and upper confidence bounds) contains the true value. In addition to sampling variability, the ACS estimates are subject to nonsampling error (for a discussion of nonsampling variability, see Accuracy of the Data). The effect of nonsampling error is not represented in these tables.

The Census Bureau introduced a new set of disability questions in the 2008 ACS questionnaire. Accordingly, comparisons of disability data from 2008 or later with data from prior years are not recommended. For more information on these questions and their evaluation in the 2006 ACS Content Test, see the Evaluation Report Covering Disability.

While the 2015 American Community Survey (ACS) data generally reflect the February 2013 Office of Management and Budget (OMB) definitions of metropolitan and micropolitan statistical areas; in certain instances the names, codes, and boundaries of the principal cities shown in ACS tables may differ from the OMB definitions due to differences in the effective dates of the geographic entities.

Estimates of urban and rural population, housing units, and characteristics reflect boundaries of urban areas defined based on Census 2010 data. As a result, data for urban and rural areas from the ACS do not necessarily reflect the results of ongoing urbanization.

Source: U.S. Census Bureau, 2015 American Community Survey 1-Year Estimates

Explanation of Symbols:

1. An '**' entry in the margin of error column indicates that either no sample observations or too few sample observations were available to compute a standard error and thus the margin of error. A statistical test is not appropriate.
2. An '-' entry in the estimate column indicates that either no sample observations or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest interval or upper interval of an open-ended distribution.
3. An '-' following a median estimate means the median falls in the lowest interval of an open-ended distribution.
4. An '+' following a median estimate means the median falls in the upper interval of an open-ended distribution.
5. An '***' entry in the margin of error column indicates that the median falls in the lowest interval or upper interval of an open-ended distribution. A statistical test is not appropriate.
6. An '*****' entry in the margin of error column indicates that the estimate is controlled. A statistical test for sampling variability is not appropriate.
7. An 'N' entry in the estimate and margin of error columns indicates that data for this geographic area cannot be displayed because the number of sample cases is too small.
8. An '(X)' means that the estimate is not applicable or not available.

S1601 LANGUAGE SPOKEN AT HOME

2015 American Community Survey 1-Year Estimates

Supporting documentation on code lists, subject definitions, data accuracy, and statistical testing can be found on the American Community Survey website in the Data and Documentation section.

Sample size and data quality measures (including coverage rates, allocation rates, and response rates) can be found on the American Community Survey website in the Methodology section.

Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, it is the Census Bureau's Population Estimates Program that produces and disseminates the official estimates of the population for the nation, states, counties, cities and towns and estimates of housing units for states and counties.

Subject	Arizona					
	Total		Percent		Percent of specified language speakers	
					Speak English only or speak English "very well"	
	Estimate	Margin of Error	Estimate	Margin of Error	Estimate	Margin of Error
Population 5 years and over	6,398,205	+/-1,329	(X)	(X)	5,826,575	+/-14,459
Speak only English	4,665,381	+/-19,982	72.9%	+/-0.3	(X)	(X)
Speak a language other than English	1,732,824	+/-19,913	27.1%	+/-0.3	1,161,194	+/-18,965
SPEAK A LANGUAGE OTHER THAN ENGLISH						
Spanish	1,317,026	+/-16,421	20.6%	+/-0.3	877,321	+/-15,340
5 to 17 years old	289,614	+/-8,606	4.5%	+/-0.1	245,435	+/-8,177
18 to 64 years old	909,564	+/-12,753	14.2%	+/-0.2	571,250	+/-13,488
65 years old and over	117,848	+/-3,180	1.8%	+/-0.1	60,636	+/-3,276
Other Indo-European languages	126,700	+/-8,190	2.0%	+/-0.1	95,483	+/-6,736
5 to 17 years old	13,194	+/-2,941	0.2%	+/-0.1	11,171	+/-2,442
18 to 64 years old	81,695	+/-6,282	1.3%	+/-0.1	63,102	+/-5,142
65 years old and over	31,811	+/-3,323	0.5%	+/-0.1	21,210	+/-2,794
Asian and Pacific Island languages	132,771	+/-7,327	2.1%	+/-0.1	77,081	+/-5,573
5 to 17 years old	15,507	+/-2,327	0.2%	+/-0.1	11,813	+/-2,018
18 to 64 years old	100,639	+/-5,452	1.6%	+/-0.1	60,236	+/-4,263
65 years old and over	16,625	+/-1,689	0.3%	+/-0.1	5,032	+/-1,269

Subject	Arizona					
	Total		Percent		Percent of specified language speakers	
					Speak English only or speak English "very well"	
	Estimate	Margin of Error	Estimate	Margin of Error	Estimate	Margin of Error
Other languages	156,327	+/-7,862	2.4%	+/-0.1	111,309	+/-6,245
5 to 17 years old	22,694	+/-3,290	0.4%	+/-0.1	18,620	+/-2,905
18 to 64 years old	112,013	+/-5,113	1.8%	+/-0.1	83,380	+/-4,158
65 years old and over	21,620	+/-1,366	0.3%	+/-0.1	9,309	+/-1,020
CITIZENS 18 YEARS AND OVER						
All citizens 18 years old and over	4,710,448	+/-14,258	(X)	(X)	4,490,927	+/-15,043
Speak only English	3,759,308	+/-16,570	79.8%	+/-0.3	(X)	(X)
Speak a language other than English	951,140	+/-16,354	20.2%	+/-0.3	731,619	+/-15,290
Spanish	676,581	+/-13,640	14.4%	+/-0.3	536,146	+/-12,541
Other languages	274,559	+/-8,384	5.8%	+/-0.2	195,473	+/-7,688

Subject	Arizona					
	Percent of specified language speakers					
	Percent speak English only or speak English "very well"		Speak English less than "very well"		Percent speak English less than "very well"	
	Estimate	Margin of Error	Estimate	Margin of Error	Estimate	Margin of Error
Population 5 years and over	91.1%	+/-0.2	571,630	+/-14,481	8.9%	+/-0.2
Speak only English	(X)	(X)	(X)	(X)	(X)	(X)
Speak a language other than English	67.0%	+/-0.8	571,630	+/-14,481	33.0%	+/-0.8
SPEAK A LANGUAGE OTHER THAN ENGLISH						
Spanish	66.6%	+/-0.8	439,705	+/-12,145	33.4%	+/-0.8
5 to 17 years old	84.7%	+/-1.2	44,179	+/-3,633	15.3%	+/-1.2
18 to 64 years old	62.8%	+/-1.1	338,314	+/-10,920	37.2%	+/-1.1
65 years old and over	51.5%	+/-2.3	57,212	+/-3,105	48.5%	+/-2.3
Other Indo-European languages	75.4%	+/-2.3	31,217	+/-3,547	24.6%	+/-2.3
5 to 17 years old	84.7%	+/-5.2	2,023	+/-899	15.3%	+/-5.2
18 to 64 years old	77.2%	+/-2.9	18,593	+/-2,922	22.8%	+/-2.9
65 years old and over	66.7%	+/-4.7	10,601	+/-1,764	33.3%	+/-4.7
Asian and Pacific Island languages	58.1%	+/-2.9	55,690	+/-5,153	41.9%	+/-2.9
5 to 17 years old	76.2%	+/-6.3	3,694	+/-1,132	23.8%	+/-6.3
18 to 64 years old	59.9%	+/-3.0	40,403	+/-3,843	40.1%	+/-3.0
65 years old and over	30.3%	+/-6.7	11,593	+/-1,514	69.7%	+/-6.7
Other languages	71.2%	+/-2.2	45,018	+/-4,335	28.8%	+/-2.2
5 to 17 years old	82.0%	+/-6.4	4,074	+/-1,637	18.0%	+/-6.4
18 to 64 years old	74.4%	+/-2.2	28,633	+/-3,040	25.6%	+/-2.2
65 years old and over	43.1%	+/-4.5	12,311	+/-1,376	56.9%	+/-4.5
CITIZENS 18 YEARS AND OVER						
All citizens 18 years old and over	95.3%	+/-0.2	219,521	+/-8,227	4.7%	+/-0.2
Speak only English	(X)	(X)	(X)	(X)	(X)	(X)
Speak a language other than English	76.9%	+/-0.8	219,521	+/-8,227	23.1%	+/-0.8
Spanish	79.2%	+/-0.9	140,435	+/-6,545	20.8%	+/-0.9
Other languages	71.2%	+/-1.5	79,086	+/-4,319	28.8%	+/-1.5

Data are based on a sample and are subject to sampling variability. The degree of uncertainty for an estimate arising from sampling variability is represented through the use of a margin of error. The value shown here is the 90 percent margin of error. The margin of error can be interpreted roughly as providing a 90 percent probability that the interval defined by the estimate minus the margin of error and the estimate plus the margin of error (the lower and upper confidence bounds) contains the true value. In addition to sampling variability, the ACS estimates are subject to nonsampling error (for a discussion of nonsampling variability, see Accuracy of the Data). The effect of nonsampling error is not represented in these tables.

Due to methodological changes to data collection that began in data year 2013, comparisons of language estimates from that point to estimates from 2013 forward should be made with caution. For more information, see: Language User Note.

While the 2015 American Community Survey (ACS) data generally reflect the February 2013 Office of Management and Budget (OMB) definitions of metropolitan and micropolitan statistical areas; in certain instances the names, codes, and boundaries of the principal cities shown in ACS tables may differ from the OMB definitions due to differences in the effective dates of the geographic entities.

Estimates of urban and rural population, housing units, and characteristics reflect boundaries of urban areas defined based on Census 2010 data. As a result, data for urban and rural areas from the ACS do not necessarily reflect the results of ongoing urbanization.

Source: U.S. Census Bureau, 2015 American Community Survey 1-Year Estimates

Explanation of Symbols:

1. An '**' entry in the margin of error column indicates that either no sample observations or too few sample observations were available to compute a standard error and thus the margin of error. A statistical test is not appropriate.
2. An '-' entry in the estimate column indicates that either no sample observations or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest interval or upper interval of an open-ended distribution.
3. An '-' following a median estimate means the median falls in the lowest interval of an open-ended distribution.
4. An '+' following a median estimate means the median falls in the upper interval of an open-ended distribution.
5. An '***' entry in the margin of error column indicates that the median falls in the lowest interval or upper interval of an open-ended distribution. A statistical test is not appropriate.
6. An '*****' entry in the margin of error column indicates that the estimate is controlled. A statistical test for sampling variability is not appropriate.
7. An 'N' entry in the estimate and margin of error columns indicates that data for this geographic area cannot be displayed because the number of sample cases is too small.
8. An '(X)' means that the estimate is not applicable or not available.

Appendix H. The ADEQ Comments on the Draft Report

Douglas A. Ducey
Governor

Arizona Department of Environmental Quality

Misael Cabrera
Director

By Electronic Mail

October 19, 2020

Amy Zimpfer, Assistant Director
USEPA, Region 9, Air and Radiation Division, Permits and Rules Branch
75 Hawthorne Street, San Francisco, CA 94105

Subject: ADEQ's comments on draft EPA findings from Title V program evaluation

Dear Ms. Zimpfer:

Thank you for the opportunity to review and respond to EPA's September 17, 2020 draft *Title V Operating Permit Program Evaluation.* Attached, please find ADEQ's responses with the relevant attachments and a marked-up version of EPA's draft with minor editorial suggestions. If EPA would like a hard copy of our response, please let me know.

ADEQ has built a culture of continuous improvement and welcomes EPA's ongoing program evaluations to identify areas where we are meeting or exceeding the requirements but more importantly to identify areas that can be improved.

I appreciate the professionalism and collaborative spirit exhibited by your staff throughout this process.

Should you have any questions, please contact me at (602) 771-4684.

Sincerely,

Daniel Czecholinski, Director
Air Quality Division

Encl: Responses to EPA Title V Evaluation
Attachment A-Draft Title V Program Evaluation with Comments
Attachment B-TSD Template
Attachment C-Public Notice Template
Attachment D-NOC/NOV Risk Matrix

Responses to EPA Title V Evaluation

Discussion Points

1. **Findings 2.2, 2.3, 3.1, 5.2** - Technical Support Document (TSD): Templates and Approach

   In April 2019, the Air Permits Unit developed a tool to generate folders and templates once a permit application is received. The tool uses application specifics like permit type and whether it is a modification to generate a folder that would include all sub-folders and templates associated with that permit application. The templates are pulled from a centralized location in which new templates are saved and older templates are archived. This process ensures that the correct and most up to date templates are in use.

   There is a TSD template that is intended solely to be used for renewals and Significant Permit Revisions (SPR). There is another template for minor revisions. The sections that are removed from the TSD template in certain instances are not due to those sections being unnecessary but rather those sections are not applicable and could potentially generate confusion. For example, if we process a minor revision that does not trigger modeling or RACT, it is noted in the body of the TSD. It would be confusing or duplicative if an entire section is added with the language duplicated or to recycle information from a previous action that does not apply to the revision. (Finding 2.2)

   A continuous improvement idea was introduced in April 2019 that identified the need to update the TSD (Statement of Basis) template document. The time that followed involved completing research and obtaining management's feedback in developing a new TSD framework. In April 2020, the Air Permits Unit held a TSD mapping meeting to identify gaps and opportunities that had historically resulted in rework and lack of clarity. The mapping meeting and the research that was completed resulted in a comprehensive TSD that includes more elements such as the reasoning for voluntarily-accepted conditions or material permit conditions (Finding 2.3, 5.2), a more robust NSR applicability section (Finding 2.2), a specific section for a CAM discussion (Finding 3.1) and more discussion regarding compliance cases and performance testing results. The new TSD template was completed as of June 2020 and is included in Attachment B.

2. **Finding 4.1** - Final Permits on Website

   Earlier this year, the Air Permits Unit became aware of a Department-wide effort to create an online permits database. It is still in its preliminary stages and is being driven at the Department level.

3. **Finding 4.2** - Public's Right to Petition

   Following the EPA's visit to ADEQ, EPA provided ADEQ sample language to address the public's right to petition EPA. ADEQ worked internally with their communications team to include the language in the template for public notices as well as to include a path to EPA's "Title V Petitions" page. This was completed and has been in place since April 2020. An example of this electronic public notice can be found here. A copy of the new public notice template can be found in Attachment C.

4. **Findings 5.1/7.8** - Permit Issuance and Process

   One of the primary goals of the Arizona Management System (AMS) is to evaluate how permits (or other deliverables) are processed to remove waste (rework, waiting time, excess processing) in order to use the elapsed time available more effectively for "more mission outcomes." For permitting, that means to remove scenarios in which the permit is waiting or time is wasted and to optimize the time the permit writer actively works on the permit. Permit writers are also required to submit a Complete and Accurate checklist that ensures that all applicable sections are included, minor NSR applicability was evaluated, and regulatory analysis was completed. This is also the checklist used by management to determine that the permit action is complete and that the Air Permits Unit is assuring quality is not compromised. This process allows the Department to measure the quality of the permit process through what is called a "first pass yield" measurement. The purpose of the first pass yield measurement is to standardize the permit writing and review process to be able to analyze the data to see where the rework tends to happen. This provides ongoing continuous improvement opportunities to enhance staff training on permitting concepts or identify opportunities to implement process level changes.

   Additionally, the Department has established a goal of 180 days for permitting projects. While the Department does aim to complete permits within 180 days, it is understood that there are instances in which the process may exceed 180 days. The Air Permits Unit has established goals for different permit types and it must be noted that the internal time frames are not set in stone. Last year, the Air Permits Unit used AMS principles to evaluate the minor permit revision process for minor sources and determined that the touch time for reviewing the application and drafting the permit (10 days) should match the time frame for major sources (20 days) because the approach for minor NSR applicability was not substantially different. Management was supportive of adjusting the time frame upwards from 10 to 20 days. Also, as mentioned during the interviews, internal time frames are used to facilitate active flow of work to develop timely environmentally protective permits. ADEQ recommends that EPA replace the word "deadlines" with "goals" to more accurately reflect the Department's approach with permit timelines.

5. **Finding 6.4** - NOV/NOC Risk Matrix and ADEQ's Compliance Approach

   The Department disagrees with the overall characterization of the effectiveness of the ADEQ air compliance program. ADEQ's Compliance and Enforcement Handbook provides consistency for compliance programs within the Department and can be found at: https://azdeq.gov/AQComplianceAssistance. ADEQ's approach to compliance is predicated on multiple opportunities; it starts with writing high quality permits that provide clarity on regulatory obligations to permittees. It is further enhanced by an inspection program that allows for comprehensive onsite periodic inspections to verify compliance status with permit terms. ADEQ inspectors work closely with facility personnel and their contractors to ensure stack test obligations are fulfilled in accordance with the permit. Lastly, ADEQ released two modules in the myDEQ online portal to facilitate the submittals of comprehensive information for compliance certifications, permit deviations and excess emissions. The evaluation of these submittals gives ADEQ one other opportunity to verify ongoing compliance.

   ADEQ implements its informal enforcement program to address issues of non-compliance identified through the field inspection or report review process. The Air Compliance Unit has very aggressive goals to document any non-compliance findings; 3 days from inspection or report review to issue notices of opportunities to correct and 7 days for notices of violations. The sooner we provide notice of non-compliance, the quicker our ability to engage permittees in corrective actions and return them to compliance. Overall, the Air Compliance Unit ended FY20 with a return to compliance performance of less than 30 days and for FY21 till date, the program is averaging 18 days. These numbers reflect the Air Compliance Unit's ongoing commitment and rigor to work with permittees to address non-compliance. While the air compliance program lacks administrative penalty authority, the Department has taken penalty action through the Attorney General's office to address egregious violations or recalcitrant non-compliance behavior.

   The Department is unclear regarding the comment about compliance staff not being aware of NOVs being issued. All recommendations for a suggested course of action for a non-compliance finding originate with the compliance inspectors and are subsequently subject to management review. While it is possible that a NOV recommendation is adjusted to an NOC or vice versa, such decisions are actively communicated to staff to ensure a common understanding for management's thought process.

   A copy of the recently updated Air Quality Division NOV Assessment Matrix is attached (Attachment D) for reference. It clarifies that all high priority violations, as identified in EPA's guidance, are suitably identified as NOV candidates.

6. **Findings 7.2 and 7.3** - Revenues and Expenditures

As documented in the program evaluation findings, ADEQ lacked a robust tracking system for Title V revenues and expenditures at the time of the evaluation. Since then, the program has invested significant resources, in coordination with the Business and Finance Team as well as the Information Technology team, to enhance the Title V financial accounting system. The program has been able to delineate the overall Air Permit Administration Fund into Title V and non-Title V streams. This will provide for certainty that Title V funds are not utilized for non-Title V purposes. Additionally, the FEC value stream now engages in more precise time tracking for its functions. Previously, only permit writing time was actively tracked because it is a billable activity. At this time, other aspects of work in the value stream like report reviews, inspections, formal and informal enforcement work are also precisely tracked. Doing this will help ensure that staff labor expenditures are suitably compensated by the appropriate revenue stream. The above-mentioned enhancements were put in place in June 2020. ADEQ has shared these concepts with EPA personnel as its proposed remedy for these findings.

As requested in the EPA findings, the Department will report information from the Title V revenues and expenditures tracking system each year for the next 5 years to address the overall substance of the EPA concerns.

7. **Finding 7.6** - Environmental Justice Awareness

   The team is aware of the intent of an environmental justice process. As a result of completing an environmental justice review of a non-title V facility, the Air Permits Unit added an Environmental Justice section into the TSD during the aforementioned update to be included for any new stationary facility applying for a permit. ADEQ has used the EPA Screening Tool in its evaluations and is working with EPA to develop a robust process for the team to communicate with environmental justice communities on air quality permits and compliance issues.

Clarifications/Items of Note

1. **Finding 2.1/6.2** Quality Assurance Process for Reviewing Permits

   The Draft Evaluation states, “Compliance Unit is no longer involved in the permit review process before permit issuance; they receive a copy during the public comment period. This makes it more challenging for enforcement to provide or incorporate feedback that would result in a permit change because the permit is already out for public review”; and

"However, as stated in Finding 2.1, the Compliance Unit's ability to make corrections to a permit may be hampered if their review of a draft permit is conducted after the permit is public noticed."

The Air Compliance Unit (ACU) has multiple opportunities to participate in the permit process prior to public notice. As a result of the weekly value stream stand-up meetings, the compliance unit is made aware of all permits being processed and any potential issues or complexities related to the facility (noted in 6.2). For questions with testing or prior cases, permit engineers reach out to their inspection and compliance counterparts for guidance or additional context. It must be noted that ACU has the opportunity to provide comments during the public notice period in their thorough review of the permit and Inspection Checklist.

2. **Finding 5.1** ADEQ Backlog/Permits Issued in Timely Manner

   The Draft Evaluation states, "The ADEQ does not issue a final permit until the facility pays the permit fee, which can delay the overall permit issuance timeline."

   ADEQ would request that clarification be made here regarding the difference between permit issuance and granting the permit. The internal and regulatory timeframes are compared against the final "days to decision" where the decision has been made to finalize the permit. This is the "Grant" date. The issuance date occurs after fees are paid but have no impact on any timeframes. In other words, the clock stops at "Grant." Since that is the case, there is a possibility that the finding that "staff mentioned the most significant obstacle is waiting for facilities to pay fees" may have either 1) been interpreted incorrectly and the staff meant that is the longest elapsed time period ("wait time") that they experience during the process or 2) they were referring to a recent (at the time of the evaluation) non-title V permit which was contentious and in which the Permittee did not pay fees in the expected time frame.

3. **Finding 5.2** Re: Synthetic Minor Permits

   The Draft Evaluation states, "Furthermore, the permits contain no conditions specific to the pollutant which is subject to a synthetic minor limit." Footnote No.49

   Footnote No. 49: "Permit No.74605, states the facility has a synthetic minor limit for PM10. However, the permit does not contain any PM10-specific emission limits, monitoring, recordkeeping, or reporting requirements."

   ADEQ would like to provide clarification on a perceived misinterpretation of the permit language in Permit No. 74605. The permit does not explicitly state that there is a synthetic minor limit for PM10. The permit states that "emissions are controlled below the major

source threshold and correspondingly, the permit has requirements that controls need to be operated." In response to the voluntary use of air pollution control devices, ADEQ imposed permit conditions to ensure control equipment is operated in a manner consistent with good air pollution practices.

4. **Finding 7.4** Process to Escalate Potential Issues

   The Draft Evaluation states, "The Department's staff report that supervisors and management are available for one-on-one consultation on title V permitting issues. Regular daily and weekly three-hour group meeting discussions are held with staff, supervisors and management to resolve any potential issues. However, staff also indicated that it can be hard to find available time to meet with managers one-on-one due to their busy schedules. Some issues are not going to be relevant to the entire unit if those issues are brought up during group unit meetings and extend the unit meeting longer than desired."

   It is important to note that not only are managers available for one-on-one consultations but all managers are required to hold a structured 1:1 with their staff members bi-weekly. If an absence occurs, the 1:1s are rescheduled so the opportunity is not missed. Staff have also scheduled longer 1:1s or meetings adjacent to 1:1s in order to discuss permitting items. In regard to the value stream meeting being longer than desired, ADEQ believes that the discussions that occur at the weekly value stream meetings are relevant to all team members as it provides them broader context on how their work ties in with the strategic direction of the value stream.

Attachment A

Arizona Department of Environmental Quality
Title V Operating Permit Program Evaluation

Draft Report

September 17, 2020

Conducted by the

U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105

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Table of Contents

Glossary of Acronyms and Abbreviations........6

Executive Summary........7

1. Introduction........9

Background........9

Title V Program Evaluation at Arizona Department of Environmental Quality........10

The ADEQ Description........11

Coordination with other State of Arizona Air Pollution Control Agencies........11

The ADEQ Title V Program........12

The Arizona Management System (AMS)........12

2. Permit Preparation and Content........14

2.1 Finding: The ADEQ has a quality assurance process for reviewing draft versions of permits before they are made available for public and the EPA review........14

2.2 Finding: The ADEQ maintains template documents developed to provide direction for several elements of permit writing........14

2.3 Finding: The ADEQ generally identifies regulatory and policy decisions in its TSDs but is not always consistent........15

2.4 Finding: The ADEQ staff have a clear understanding of, and the ability to correctly implement, the various title V permit revision types or tracks pursuant to the Department and federal regulations. 18

2.5 Finding: The Department made revisions to its title V program to implement a unitary permitting program........19

2.6 Finding: The Department generally incorporates applicable requirements into title V permits in an enforceable manner........19

2.7 Finding: The Department references the regulatory authority for each applicable requirement in the permit conditions and includes a permit shield for these requirements........21

3. Monitoring........22

3.1 Finding: The ADEQ successfully implements the CAM requirements........22

3.2 Finding: The ADEQ includes sufficient monitoring to ensure compliance with applicable requirements........23

DRAFT

3.3 Finding: The ADEQ developed source-specific forms for semi-annual and annual monitoring reports. 24

4. Public Participation and Affected State Review 24

4.1 Finding: The ADEQ provides public notices of its draft title V permitting actions on its website. 25

4.2 Finding: The ADEQ should improve notification regarding the public's right to petition the EPA Administrator to object to a title V permit. 26

4.3 Finding: The ADEQ uses a multi-pronged approach to public participation to reach as many people as possible. For example, the ADEQ translates public notices and publications into Spanish. 26

4.4 Finding: The ADEQ's general practice is to conduct a concurrent public and EPA review. If comments are received during the 30-day public review period, the 45-day EPA review is restarted and run sequentially to the public review period, not concurrently. 27

5. Permit Issuance / Revision / Renewal 28

5.1 Finding: The ADEQ has no title V permit backlog and issues initial and renewal permits in a timely manner. However, there is some concern that internal deadlines are too short. 28

5.2 Finding: ADEQ R18-2-306.01, "Permits Containing Voluntarily Accepted Emission Limitations and Standards," allows sources to voluntarily limit their potential to emit to avoid title V applicability. 29

6. Compliance 31

6.1 Finding: The ADEQ performs full compliance evaluations of all title V sources on an annual basis. 31

6.2 Finding: The ADEQ's permitting and compliance managers communicate effectively with each other and meet routinely to discuss programmatic issues. 31

6.3 Finding: The Permits Unit reviews compliance reports before a permit renewal is issued and discusses compliance issues with the Compliance Unit. 32

6.4 Finding: The Permit Unit reviews all compliance and deviation reports and uses an internal decision matrix to determine whether or not to escalate issues to the Compliance Unit. 32

7. Resources and Internal Management 33

7.1 Finding: The ADEQ permitting and compliance staff report that they receive effective legal support from both the Attorney General's office as well as an in-house attorney. 33

DRAFT

7.2 Finding: In preparing its initial response to the EPA's evaluation questionnaire and during the EPA's site visit, the ADEQ was unable to provide information identifying the revenue and expenses associated with the ADEQ's title V permitting program. 34

7.3 Finding: From 2008 to 2020, portions of the ADEQ permitting fee revenue from the Air Permits Administration Fund (APAF) was diverted from the ADEQ permitting program to support other programs and the Arizona General Fund. 35

7.4 Finding: There is a process to escalate potential issues and empower staff to solve problems. 36

7.5 Finding: The Department provides training for its permitting staff. 36

7.6 Finding: Most permitting staff are aware of environmental justice (EJ) but are not familiar with how the Department's EJ principles affect their work. 36

7.7 Finding: The ADEQ focuses on succession planning in the event of unexpected retirements or departures. 37

7.8 Finding: The ADEQ management sets aggressive timeframes for staff to process title V permitting actions, perhaps at the expense of permit quality and staff morale 38

8. Records Management 39

8.1 Finding: The ADEQ's Records Center has a central file system in the building and is well managed. It is a great improvement from our 2006 Evaluation finding. 39

8.2 Finding: The ADEQ uses an electronic database to track title V permits effectively, issue general permits, and assist in compliance reporting. 40

Appendix A. Air Pollution Control Agencies in Arizona 42

Appendix B. Title V Questionnaire and the ADEQ Responses 42

Appendix C. U.S. EPA Statement of Basis Guidance 42

Appendix D. Map of Linguistically Isolated Households in the ADEQ 42

Appendix E. Fee Information 42

Appendix F. 2015 State Review Framework 42

Appendix G. Nondiscrimination Program Plan, January 2017 42

Appendix H. The ADEQ Comments on the Draft Report 42

Appendix I. The EPA Response to the ADEQ Comments 42

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Acknowledgments
EPA Region 9 acknowledges the cooperation of the staff and management of the Arizona Department of Environmental Quality (ADEQ). We appreciate their willingness to respond to information requests and share their experiences regarding the implementation of the ADEQ's title V program under the Clean Air Act.

Glossary of Acronyms and Abbreviations

Act	Clean Air Act [42 USC Section 7401 et seq.]
ADEQ	Arizona Department of Environmental Quality
AMS	Arizona Management System
AQD	ADEQ Air Quality Division
ARS	Arizona Revised Statutes
CAA	Clean Air Act [42 USC Section 7401 et seq.]
CAM	Compliance Assurance Monitoring
CFR	Code of Federal Regulations
Department	Arizona Department of Environmental Quality
EJ	Environmental Justice
EPA	U.S. Environmental Protection Agency
FCE	Full Compliance Evaluation
NAAQS	National Ambient Air Quality Standard
NESHAP	National Emission Standards for Hazardous Air Pollutants, 40 CFR Parts 61 & 63
NOC	Notice of Opportunity to Correct Deficiencies
NOV	Notice of Violation
NO_x	Nitrogen Oxides
NSPS	New Source Performance Standards, 40 CFR Part 60
NSR	New Source Review
OIG	EPA Office of Inspector General
PM	Particulate Matter
PM_{10}	Particulate Matter less than 10 micrometers in diameter
$PM_{2.5}$	Particulate Matter less than 2.5 micrometers in diameter
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
Region	U.S. Environmental Protection Agency Region 9
SIP	State Implementation Plan
SO_2	Sulfur Dioxide
SW	Standard Work
Team	EPA Region 9 Program Evaluation Team
TSD	Technical Support Document

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Executive Summary

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

The EPA's Region 9 ("the Region") oversees 47 air permitting authorities with title V programs. Of these, 43 are state or local authorities approved pursuant to 40 CFR part 70 (35 in California, three in Nevada, four in Arizona, and one in Hawaii), referred to as "Part 70" programs. The terms "title V' and "Part 70" are used interchangeably in this report. The Region also oversees a delegated title V permitting program in Navajo Nation under 40 CFR part 71 and title V programs in Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands under 40 CFR part 69, referred to, respectively, as "Part 71" and "Part 69" programs. Because of the significant number of permitting authorities, the Region has committed to performing, on an annual basis, one comprehensive title V program evaluation of a permitting authority with 20 or more title V sources. This approach covers about 85% of the title V sources within the Regional boundaries.

The Region initially conducted a title V program evaluation of the Arizona Department of Environmental Quality (ADEQ or "Department") in 2006 ("2006 Evaluation").[1] This is the second title V program evaluation the EPA has conducted for the ADEQ. The EPA Region 9 program evaluation team (Team) for this evaluation consisted of the following EPA personnel: Amy Zimpfer, Air and Radiation Division Assistant Director; Lisa Beckham, Acting Manager of the Air Permits Office; Ken Israels, Program Evaluation Advisor; Sheila Tsai, Program Evaluation Coordinator; Khoi Nguyen, Program Evaluation Team Member, and Mario Zuniga, Program Evaluation Team Member.

The program evaluation was conducted in four stages. During the first stage, the Region sent the ADEQ a questionnaire focusing on title V program implementation in preparation for the site visit at the ADEQ's offices (see Appendix B, Title V Questionnaire and ADEQ Responses). During the second stage, the Team conducted an internal review of the EPA's own set of ADEQ title V permit files. The third stage was a site visit, which consisted of Region 9 representatives visiting the ADEQ office, located in Phoenix, AZ, to interview Department staff and managers. The site visit took place December 3-6, 2019. The fourth stage involved follow-up and clarification of issues for completion of the draft report.

The Region's 2020 title V program evaluation of the ADEQ's Part 70 program and implementation of the program concludes that the ADEQ implements a generally effective program. We specifically find that the Department generally follows guidance documents and written procedures on processing of permit revisions to assure compliance with all applicable requirements (Findings 2.2 and 2.6);

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[1] Arizona Department of Environmental Quality Title V Operating Permit Program Evaluation, dated June 2, 2006. See https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf

promotes communication and empowers staff to solve problems (Finding 7.4); and maintains well organized records center (Finding 8.1). We have also identified certain areas for improvement. Major findings from our report are listed below:

1. Finding: The ADEQ staff have a clear understanding of, and the ability to correctly implement, the various title V permit revision tracks pursuant to the Department and federal regulations. (Finding 2.4)

2. Finding: The Department generally incorporates applicable requirements into title V permits in an enforceable manner. (Finding 2.6)

3. Finding: The ADEQ includes sufficient monitoring to ensure compliance with applicable requirements. (Finding 3.2)

4. Finding: The ADEQ developed source-specific forms for semi-annual and annual monitoring reports. (Finding 3.3)

5. Finding: The ADEQ should improve notification regarding the public's right to petition the EPA Administrator to object to a title V permit. (Finding 4.2)

6. Finding: The ADEQ uses a multi-pronged approach to public participation to reach as many people as possible. For example, the ADEQ translates public notices and publications into Spanish. (Finding 4.3)

7. Finding: The ADEQ has no title V permit backlog and issues initial and renewal permits in a timely manner. (Finding 5.1)

8. Finding: The ADEQ's permitting and compliance managers communicate effectively with each other and meet routinely to discuss programmatic issues. (Finding 6.2)

9. Finding: In preparing its initial response to the EPA's evaluation questionnaire and during the EPA's site visit, the ADEQ was unable to provide information identifying the revenue and expenses associated with the ADEQ's title V permitting program. (Finding 7.2)

10. Finding: From 2008 to 2020, portions of the ADEQ permitting fee revenue from the Air Permits Administration Fund (APAF) was diverted from the ADEQ permitting program to support other programs and the Arizona General Fund. (Finding 7.3)

Our report provides a series of findings (in addition to those listed above) and recommendations that should be considered in addressing our findings. As part of the program evaluation process, the ADEQ has been given an opportunity to review these findings and consider our recommendations.

DRAFT

1. Introduction

Background

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

After reviewing several selected state and local air pollution control agencies, the OIG issued a report on the progress of title V permit issuance by the EPA and states.[2] In the report, the OIG concluded that 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.

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

On October 20, 2014, the OIG issued a report, "Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues," that recommended, in part, that the EPA: establish a fee oversight strategy to ensure consistent and timely actions to identify and address violations of 40 CFR part 70; emphasize and require periodic reviews of title V fee revenue and accounting practices in title V program evaluations; and pursue corrective actions, as necessary.[3]

The EPA's Region 9 oversees 47 air permitting authorities with operating permit programs. Of these, 43 are state or local authorities with title V programs approved pursuant to 40 CFR part 70 (35 in California, three in Nevada, four in Arizona, and one in Hawaii), referred to as "Part 70" programs. The Region also oversees a delegated title V permitting program in Navajo Nation under 40 CFR part 71 and

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[2] See Report No. 2002-P-00008, Office of Inspector General Evaluation Report, "EPA and State Progress In Issuing title V Permits", dated March 29, 2002, which can be found on the internet at https://www.epa.gov/sites/production/files/2015-12/documents/titlev.pdf.

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

DRAFT

title V programs in Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands under 40 CFR part 69, referred to, respectively, as “Part 71” and “Part 69” programs. Due to the significant number of permitting authorities, the Region has committed to performing one comprehensive title V program evaluation of a permitting authority with 20 or more title V sources every year. This approach covers about 85% of the title V sources in the Region.

Title V Program Evaluation at Arizona Department of Environmental Quality

This is the second title V program evaluation the EPA has conducted for ADEQ. The first title V program evaluation was conducted in 2006. Thus, this evaluation is a follow-up to ADEQ’s 2006 title V program evaluation. The EPA Region 9 program evaluation team (Team) for this evaluation consisted of the following EPA personnel: Amy Zimpfer, Air and Radiation Division Assistant Director; Lisa Beckham, Acting Manager of the Air Permits Office; Ken Israels, Program Evaluation Advisor; Sheila Tsai, Program Evaluation Coordinator; Khoi Nguyen, Program Evaluation Team Member; and Mario Zuniga, Program Evaluation Team Member.

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

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

The third stage of the program evaluation included a site visit to the ADEQ office in Phoenix, Arizona to conduct further file reviews, interview ADEQ staff and managers, and review the Department’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 December 3-6, 2019.

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

The ADEQ Description

Under the Environmental Quality Act of 1986, the Arizona State Legislature created the ADEQ in 1987 as the state's cabinet-level environmental agency. The ADEQ is composed of three environmental programs: Air Quality, Water Quality, and Waste, with functional units responsible for technical, operational, and policy support. The ADEQ carries out several core functions: planning, permitting, compliance management, monitoring, assessment, cleanups, and outreach. The ADEQ also maintains a regional office in Tucson, with community liaisons posted in various parts of the state.

The ADEQ Air Quality Division (AQD) core responsibilities include developing and implementing programs designed to ensure that Arizona meets national air quality standards, regulating the emission of air pollutants from industries and facilities by issuing and ensuring compliance with permits that ensure emissions are within healthful limits, monitoring Arizona's air quality, investigating complaints and violations of Arizona's air quality laws, and developing state rules governing air quality standards. The AQD is organized by the following sections: Vehicle Emissions Section, Facilities Emissions Control Section, Improvement Planning Section, and Monitoring & Assessment Section. Facilities Emissions Control Section, managed by a section manager, is divided into the Permits Unit and the Compliance Unit, each with a unit manager. Stationary source air permits, including title V permits, are issued by the Permits Unit, which has about nine permit engineers that work on both minor source and title V permits. Compliance and enforcement activities, such as facility inspections, source testing/source testing oversight, and preparing enforcement cases are handled by the Compliance Unit, which is currently made up of twelve staff members.

Coordination with other State of Arizona Air Pollution Control Agencies

The ADEQ is responsible for submitting the State Implementation Plan (SIP) and federally-mandated air permitting programs for Arizona to the EPA. In addition to ADEQ, local air quality control agencies within the State of Arizona are operated by Maricopa County, Pima County, and Pinal County. State law and delegation agreements between ADEQ and the county air quality control agencies describe the roles and responsibilities of each agency and delineate jurisdiction of sources within Arizona.

Title 49, Chapter 3, Air Quality of the Arizona Revised Statutes (ARS) provides authority for county air quality control agencies to permit sources of air pollution, including sources operating pursuant to title V of the Act. Arizona law provides that the ADEQ has jurisdiction over sources, permits and violations that pertain to (1) major sources in any county that has not received approval from the EPA Administrator for New Source Review (NSR) and Prevention of Significant Deterioration (PSD); (2) metal ore smelters; (3) petroleum refineries; (4) coal-fired electrical generating stations; (5) Portland cement plants; (6) air pollution by portable sources; (7) mobile sources;[4] and (8) sources located in a county which has not submitted a program as required by title V of the Act or a county that had its

[4] However, per §209(a) of the Clean Air Act, "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part." See Section 209 of the Clean Air Act for more details.

DRAFT

program disapproved.[5] All other sources located in Maricopa, Pima, and Pinal Counties are under the jurisdiction of the respective counties. Arizona law further provides authority for the Director of ADEQ to delegate to local air quality control agencies authority over sources under ADEQ jurisdiction.[6]

Arizona law provides authority for county air quality control agencies to review, issue, revise, administer, and enforce permits for sources required to obtain a permit.[7] It mandates that county procedures for review, issuance, revision and administration of permits for sources subject to the requirements of title V of the Act be identical to the procedures for such sources permitted by the State. Under Arizona law, all sources subject to permitting requirements within the State of Arizona, exclusive of Indian country, are covered by either the state or a county permitting program.

The ADEQ Title V Program

The EPA granted interim approval to the ADEQ's title V program on November 29, 1996, effective November 29, 1996 and full approval on December 5, 2001, effective November 30, 2001.[8]

Part 70, the federal regulation that contains the title V program requirements for states, requires that a permitting authority take final action on each permit application within 18 months after receipt of a complete permit application. The only exception is that a permitting authority must take action on an application for a minor modification within 90 days of receipt of a complete permit application.[9] The ADEQ's local rules regarding title V permit issuance contain the same timeframes as Part 70.[10]

Currently, there are 49 sources in the ADEQ jurisdiction that are subject to the title V program. The Department has sufficient permitting resources[11], and processes title V permit applications in a timely manner. The ADEQ currently does not have a title V permit backlog.

The Arizona Management System (AMS)

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[5] See ARS 49-402.

[6] See ARS 49-107.

[7] See ARS 49-480(B). This statute states the following: "Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and required to be obtained pursuant to Title V of the Clean Air Act including sources that emit hazardous air pollutants shall be substantially identical to procedures for the review, issuance, revision and administration of permits issued by the Department under this chapter. Such procedures shall comply with the requirements of sections 165, 173 and 408 and Titles III and V of the clean air act and implementing regulations for sources subject to Titles III and V of the clean air act. Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and not required to be obtained pursuant to Title V of the clean air act shall impose no greater procedural burden on the permit applicant than procedures for the review, issuance, revision and administration of permits issued by the Department under sections 49-426 and 49-426.01 and other applicable provisions of this chapter."

[8] 61 FR 55910 (October 30, 1996) and 66 FR 63175 (December 5, 2001), respectively.

[9] See 40 CFR 70.7(a)(2) and 70.7(e)(2)(iv).

[10] See ADEQ R18-2-319.

[11] See Section 7 of this report.

DRAFT

Lean management is an approach to managing an organization with the concept of continuous improvement through various methods such as visual management, standard process, performance measures, business reviews, and problem solving. The ADEQ has adopted this management style over the past seven years to "further its mission to protect and enhance public health and the environment of Arizona."[12] Since the state-wide implementation of the Arizona Lean Management System (now Arizona Management System (AMS)) in 2012, the ADEQ has developed multiple visual management and problem-solving tools that are utilized to identify potential permitting issues and share those issues with the permitting team to leverage people's experiences. The goal is to minimize idle time in the permitting process and increase accountability as a collective team in permitting sources. The Air Permits Unit also developed a process called Standard Work (SW) to ensure each permit engineer knows the process steps for each permit type. The purpose of SW is to allow new employees to easily pick up the process steps, allowing for more time to be spent on technical aspects of the permitting process. Since the 2006 Evaluation, the ADEQ has developed templates to be utilized for permit renewals and implemented the use of external regulatory frameworks/tools to streamline rule review and increase understanding of the permitting process. Support for training, development, and alignment with AMS ensures that permit engineers are supported to develop legally defensible permits. Over the years, the ADEQ has developed two major guidance documents that have also contributed to the improvement of permits: Air Dispersion Modeling Guidance and Minor New Source Review Guidance.[13]

The EPA's Findings and Recommendations

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

The findings and recommendations in this report are based on the Department's responses to the title V Questionnaire, the EPA's internal file reviews performed prior to the site visit to the ADEQ, interviews and file reviews conducted during the December 3-6, 2019 site visit, and follow-up emails and phone calls made since the site visits.

[12] https://azdeq.gov/node/3764

[13] Air Dispersion Modeling: http://azdeq.gov/node/2126; Minor New Source Review: https://legacy.azdeq.gov/environ/air/permits/download/minor_nsr_guid.pdf

DRAFT

2. Permit Preparation and Content

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

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

Discussion: Interviewees were consistent in their description of the ADEQ's quality assurance process for reviewing title V permits. The ADEQ has developed processes and templates to help ensure consistency from permit to permit. The draft permit package is first reviewed in depth by the unit manager and then reviewed by the section manager for completeness, accuracy, and approval. After internal management review the permit is sent to the permittee for review and comment.

In the 2006 Evaluation, the ADEQ did not have written quality assurance procedures.[14] The ADEQ now has a defined written process for title V permits and staff are well-informed of the process through SW. During the interviews, most staff stated they appreciate having SW and templates. One notable difference from the previous program evaluation is that the Compliance Unit is no longer involved in the permit review process before permit issuance; they receive a copy during the public comment period. This makes it more challenging for enforcement to provide or incorporate feedback that would result in a permit change because the permit is already out for public review.

Recommendation: The EPA commends the ADEQ's improvement for developing written procedures for its permitting processes. However, please note areas of improvement in permit quality in Findings 2.2 and 2.3. The ADEQ quality assurance process appears to be effective, but we recommend including compliance review prior to the public participation process.

2.2 **Finding:** The ADEQ maintains template documents developed to provide direction for several elements of permit writing.

Discussion: As mentioned in Finding 2.1, the ADEQ uses templates for developing permits and Statements of Bases, or as the Department refers to them, technical support documents (TSDs), to ensure consistency. In the 2006 Evaluation, the EPA recommended the ADEQ further develop TSD templates to include more detail.[15] For example, in the TSD outline, the EPA

[14] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 2.1.

[15] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 2.2.

DRAFT

recommended that the ADEQ include specific references to PSD/NSR history and compliance assurance monitoring (CAM). Currently, the ADEQ's standard template for TSDs includes the following information:[16] an introduction, evaluation of nearby learning sites (e.g., public schools), compliance history, emissions information, minor NSR review, applicable regulations, review of changes to previous permit conditions, monitoring, recordkeeping, and reporting requirements, testing requirements, and ambient air impacts. The TSD template also includes "gatekeeper" criteria; permitting staff follow the modification definitions in the ADEQ rules and the "gatekeeper" section in the TSD template to determine which of the title V permit revision tracks applies to a permit revision.

During interviews, permitting staff raised concerns that the templates are not always up to date, and a standard procedure for updating the templates has not been developed. While permits of similar sources are generally consistent, the EPA did find a few instances where permits of similar sources differ in both organization and included requirements.[17] We recommend developing a process for updating the templates as needed and notifying staff when templates are updated so staff can incorporate the most recent changes in a timely manner.

Additionally, review of TSDs for various actions demonstrated that not all actions include the sections identified in the templates. Review of minor and significant revision actions demonstrated that very limited information is sometimes provided compared to the template TSD.[18] One reason for this is that the TSD template for revisions recommends omitting sections if determined unnecessary. However, instead of omitting sections, it would be more helpful to the EPA and the public if the TSD explained why a section was not applicable for a given action.

Recommendation: We encourage the ADEQ to continue to implement the practice of developing and enhancing templates for permitting documents. We recommend the ADEQ develop a process for updating templates and notifying staff of the updates and ensuring current permitting documents use the most recent versions. Furthermore, the TSD templates could be strengthened by including CAM and PSD/NSR history and applicability (including NAAQS attainment status and applicable permitting thresholds).

2.3 Finding: The ADEQ generally identifies regulatory and policy decisions in its TSDs.

[16] The ADEQ also has a second template that is specific to permit revisions that identifies that the TSD should include: an introduction, emissions information, revision description, evaluation of nearby learning sites, applicable regulations, periodic monitoring, testing requirements, minor revision "gatekeeper" analysis (evaluation as to why a revision qualifies as a minor revision), and equipment list updates.

[17] The EPA reviewed the permits from Alamo Lake Compressor Station, Hackberry Compressor Station, and Wenden Compressor Station for the purpose of comparing the permitting files of these similar sources.

[18] Revisions reviewed included: minor revisions for Freeport-McMoRan Miami (Permit #66039), Salt River Project – Coronado Generating Stations (Permit #64169), APS – Fairview Generating Station (Permit #61352).

DRAFT

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

The EPA has issued guidance on the required content of statements of basis on several occasions, most recently in 2014.[19] This guidance has consistently explained the need for permitting authorities to develop statements of basis with sufficient detail to document their decisions in the permitting process. The EPA provided an overview of this guidance in a 2006 title V petition order. *In the Matter of Onyx Environmental Services*, Order on Petition No. V-2005-1 (February 1, 2006) (*Onyx Order*) at 13-14. In the *Onyx Order*, in the context of a general overview statement on the statement of basis, the EPA explained:

> *A statement of basis must describe the origin or basis of each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that U.S. EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from simply a straight recitation of applicable requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring that is required under 40 C.F.R. § 70.6(a)(3)(i)(B). Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and U.S. EPA a record of the applicability and technical issues surrounding the issuance of the permit. (Footnotes omitted.) See, e.g., In RePort Hudson Operations, Georgia Pacific, Petition No. 6-03-01, at pages 37-40 (May 9, 2003) ("Georgia Pacific''); In Re Doe Run Company Buick Mill and Mine, Petition No. VII-1999-001, at pages 24-25 (July 31, 2002) ("Doe Run''); In Re Fort James Camas Mill, Petition No. X-1999-1, at page 8 (December 22, 2000) ("Ft. James").*

Onyx Order at 13-14. Appendix C of this report contains a summary of the EPA guidance to date on the suggested elements to be included in a Statement of Basis.

As previously discussed in Finding 2.2, the Department uses templates for its TSDs. With our recommended improvements, we believe these template TSDs can serve as an effective means for ADEQ staff to document regulatory and policy decisions during the review process. In reviewing specific TSDs, we found the Department occasionally adds relevant information about a source beyond the identified template sections (e.g., alternate operating scenarios and compliance assurance monitoring). During interviews, permitting staff indicated that the quality

[19] Memorandum from Stephen D. Page, Director of the Office of Air Qualtiy Planning and Standards, "Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Permits," April 30, 2014. https://www.epa.gov/sites/production/files/2015-08/documents/20140430.pdf

DRAFT

of a TSD for a renewal permit most likely depends on the quality of the prior renewal actions as limited time may be spent updating the TSD. Thus, it is important to not only update the template outlines for TSDs, but also ensure each TSD reflects the most recent TSD template and any changes or updates to the facility from previous renewals.[20]

Most of the renewal permits reviewed by the EPA contained a discussion of all applicable and potentially applicable requirements. However, the file review led to the discovery of two examples where a discussion of potentially applicable requirements was omitted in the TSD.[21] There were also a few instances where the date of installation or construction of a unit is not clear. This may be significant as the applicability of certain requirements may change based on the date of installation or modification.[22, 23]

The Department also routinely identifies "material permit conditions," as required per ADEQ R18-2-331, in its title V permits. Per ADEQ R18-2-331, material permit conditions can be, among other things, "[an] enforceable emission standard imposed to avoid classification as a major modification or major source or to avoid triggering any other applicable requirement." Limited information, if any, is provided in TSDs related to material permit conditions. If a material permit condition is used to avoid an otherwise applicable requirement, it is not clear which requirement is being avoided. As such, it is difficult to confirm that the facility is in fact qualified to avoid applicability of a requirement. The Department should discuss the basis of the material conditions in the TSD and identify each requirement that is being avoided through the material permit condition. This would enable EPA, the public, and the facility to understand

[20] For example, the TSD for the APS – Cholla Generating Station renewal permit (#65054 Renewal) contains a thorough and detailed description of the coal-fired generating station, including its equipment and operations. However, a review of the permit shows that the facility will be converting to natural gas. This type of new information and significant change in how the facility will be operating in the future should be included in the TSD as this may affect requirements that become applicable during the term of the permit.

[21] See Alamo Lake Compressor Station, NSPS Subpart KKKK applicability in the TSD for permits 49503 and 78413 and Drake Cement Plant, NSPS Subpart F applicability in the TSD for permit 65587.

[22] The date of installation for boiler 4 for the Cholla Generation Station is not clear. The boiler could be subject to different NSPS requirements if it began construction after September 18th, 1978; in that case the boiler would be subject to NSPS Subpart Da requirements instead of Subpart D requirements. The date of installation or modification is further unclear as the permit contains requirements from both Subpart D and Da (see Section III. of permit 65054). If the boiler is subject to NSPS Subpart Da requirements, the TSD should include a brief explanation to clarify the applicability determination.

[23] In another example, the TSD for Alamo Lake Compressor Station permit 49503 states that the "year of manufacture" for the Solar Turbine is 2007, it was constructed "after October 3, 1997," a "like-kind component exchange was completed in February 2008," and it is not subject to NSPS Subpart KKKK. Subpart KKKK applies to Stationary Combustion Turbines which commenced construction, modification, or reconstruction after February 18, 2005. The use of the term "Year of Manufacture" for the turbine in the TSD is easily interpreted as the year of construction. Therefore, a "year of manufacture," or construction, of 2007 would make the turbine subject to the requirements of Subpart KKKK. If the turbine is not subject to Subpart KKKK requirements, the TSD should clearly explain why the Solar Turbine is not subject to Subpart KKKK. Furthermore, NSPS Subpart OOOO should be mentioned in compressor station permit TSDs as these requirements could be applicable to the turbines in the event they are modified or reconstructed.

the basis of the material permit conditions and enable reviewers to verify that avoided requirements are not applicable.

Recommendation: The Department should continue its practice of using template TSDs to help ensure regulatory and policy decisions are documented. We also recommend the ADEQ continue the practice of adding additional discussion topics to TSDs, as warranted for individual actions. It is unclear what may have caused the specific inconsistencies in TSDs identified in this finding, but we recommend the ADEQ investigate and correct these issues accordingly. Further, we recommend the ADEQ develop methods for ensuring renewal TSDs are updated with new or updated information and that TSDs discuss the basis of material permit conditions, including any requirements being avoided.

2.4 **Finding:** The ADEQ staff have a clear understanding of, and the ability to correctly implement, the various title V permit revision types or tracks pursuant to the Department and federal regulations.

Discussion: In our 2006 Evaluation, the EPA recommended that the ADEQ develop and implement a guidance document for determining if a permit revision is significant, minor, or off-permit consistent with Part 70 and ADEQ's approved title V program.[24] The EPA stated that the ADEQ must ensure that sources proposing to make off-permit changes be documented in a TSD, through a memorandum to the file, or some other mechanism that consistently and accurately records off-permit determinations and justifications. The EPA also recommended that the ADEQ prepare Statement of Basis for all minor permit revisions and include them in permit review submittals to the EPA.

As mentioned in Finding 2.2, the ADEQ developed "gatekeeper" criteria in its permit templates; permitting staff follow the definitions in the ADEQ rules and the "gatekeeper" section in the TSD template to determine which of the title V permit revision tracks applies to a permit revision. Their determination regarding which track applies is also verified by the supervisor during the review process.

The ADEQ can produce records for all permit revisions, including administrative, off-permit changes, and minor permit revisions easily through their file system. Based on our file review of various minor permit and off-permit actions,[25] the ADEQ has demonstrated it consistently documents its rationale and justification for minor permit revisions and off-permit changes in a

[24] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 5.4.

[25] The minor permit revisions and off-permit changes reviewed include: Coronado Generating Station Permit No. 64169, Minor Permit Revision No. 71352; Springerville Generating Station Permit No. 53418, Facility Change Without a Permit Revision No. 66694; Springerville Generating Station Permit No. 65614, Facility Change Without Permit Revision Nos. 77262 and 77660; Drake Cement Permit No. 65587, Facility Change Without Permit Revision No. 73928; and Rillito Cement Plant Permit No. 61522, Minor Permit Revision No. 73015.

DRAFT

memorandum or TSD as part of the permit action record. The ADE77Q also provides these determinations to the EPA. The EPA commends ADEQ for including such memorandums and TSDs in the permit record.

The ADEQ's understanding of the criteria for classifying title V revisions allows for consistent processing of title V permit changes.

Recommendation: The ADEQ should continue to ensure permitting staff successfully categorize title V permit actions and continue its good practice of thoroughly documenting the rationale and justification for its permit revision decisions.

2.5 **Finding:** The Department made revisions to its title V program to implement a unitary permitting program.

Discussion: In our 2006 Evaluation, we identified concerns with the Department's transition to a unitary permitting program (which uses many of the same rules to meet title V and New Source Review (NSR) program requirements) that utilized rules that had not been approved into Arizona's SIP and did not necessarily ensure permitting actions were reviewed to determine NSR applicability.[26] Since then, the ADEQ and the EPA have been working to update the ADEQ's SIP-approved NSR program. In 2012, the ADEQ submitted a complete revision of its NSR program for the EPA's approval. The revision integrated the ADEQ's title V and NSR programs into a unitary permitting program and included procedures for determining NSR applicability. Most of these revisions have been approved into Arizona's SIP,[27] but a few outstanding deficiencies currently remain that the ADEQ and the EPA are working to address. We note however, that SIP approval of a rule does not equate to title V approval. Thus, since the Department relies on some of the same rules for NSR and title V purposes, and many of those rules have been revised since EPA's 2001 approval of the ADEQ's title V program,[28] the Department should submit a title V program revision once the remaining deficiencies in the NSR program are addressed.

Recommendation: The ADEQ should submit a title V program revision to the EPA for approval once the remaining deficiencies in ADEQ's NSR program are addressed.

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

[26] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 5.2.

[27] See, e.g., 80 Fed. Reg. 67319 (Nov 2, 2015) and 83 Fed. Reg. 19631 (May 4, 2018).

[28] E.g., ADEQ R18-2-301, 302, 304, 306, 307, 317, 319, 320, and 321.

DRAFT

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

The Department generally incorporates applicable requirements into title V permits with sufficient detail to enable the facility and compliance staff to ensure compliance.[29] The permits issued by the department are organized into attachments that contain specific sets of enforceable requirements, equipment lists, or other provisions. Based on ADEQ's Class I template, title V permits consistently include three separate attachments: Attachment "A" – General Provisions; Attachment "B" – Specific Conditions; and Attachment "C" – Equipment List. This consistency helps reviewers more easily locate permit conditions and content. However, based on EPA's review, there are times when some permits reference attachments which are blank or are not found in the permit file.[30]

Based on our review of the Department's title V permits, the ADEQ mostly incorporates applicable requirements into its title V permits in an enforceable manner and with the appropriate level of detail. The EPA recommends the Department include in its quality assurance process a step to confirm the inclusion of all relevant attachments in each permit, including the versions provided for review by the EPA and the public.[31] We recommend the

[29] The EPA found instances where the limits were not enforceable as a practical matter because sufficient monitoring and recordkeeping was not included, or the permits did not contain all referenced materials, including attachments from other permits. Although the permits include voluntary emission limits, some permits do not include sufficient monitoring and recordkeeping to verify compliance with all the limits. See the permit for Drake Cement, permit 65587, Condition III.C.3. In this condition, the permit places a limit of 9,700 tons per year of filter cake from semiconductor manufacturing filtration process that can be incorporated into the cement process. Per condition III.C.4.g., the permit only requires the records to document chemical and elemental makeup of semiconductor manufacturing filtration process filter cake (SMFPFC) in units of part per million, as well as a monthly analysis of fluoride concentration and a "comprehensive laboratory analysis" during each month and quarter in which filter cake is received. The permit does not require the facility to monitor and maintain records of the quantity of SMFPFC incorporated per month.

[30] As an example, the Phoenix Cement Plant permit, permit 69780, lists Attachment "E": Operation & Maintenance Plan in the table of contents and references it in the facility-wide air pollution control requirements section of the permit. While Attachment "E" is found in the permit PDF file at the end, the attachment is blank and does not contain the O&M Plan. As a separate example, the Cholla Generation Station permit 65054 repeatedly references Attachment "F", SPR #61713 in numerous permit conditions, yet Attachment "F" from SPR #61713 is not mentioned in the table of contents nor is it found in the PDF file of the final permit. If the permit conditions reference attachments from separate permits, those referenced attachments must be attached to the title V permit referencing them so that the title V permit is a standalone document.

[31] In a recent rulemaking clarifying title V petition requirements, EPA revised 40 CFR 70.8 to require that permitting authorities include a written RTC (where applicable) when submitting a permit to EPA for its 45-day review period. 85 FR 6431 (February 5, 2020).

DRAFT

Department develop a process to ensure the attachments mentioned and referenced in the permits are included in a sufficient manner as to assure compliance with applicable requirements.

Recommendation: The ADEQ should continue its good practice of incorporating requirements in sufficient detail to ensure that permit conditions are practically enforceable. We recommend the Department develop a process to ensure the attachments mentioned and referenced in the permits are included and filled out with the relevant information to assure compliance with applicable requirements. In addition, the EPA recommends the Department correct the issues identified in the examples mentioned in the footnotes to this section and develop a process to check for this type issue in other permits.

2.7 **Finding:** The Department references the regulatory authority for each applicable requirement in the permit conditions and includes a permit shield for these requirements.

Discussion: Based on the EPA's review of the Department's permits, the ADEQ typically references the regulatory authority from which the applicable requirements originate. Per 40 CFR 70.6(a)(1)(i), "The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based." This requirement is often fulfilled in the Department's permits. The EPA commends the Department on its effort to fulfill the requirements under paragraph 70.6(a)(1)(i).

In the permits we reviewed, the Department included a permit shield after each section of applicable requirements. This permitting practice further highlights the importance of referencing the appropriate regulations that are the basis for the condition, as each permit shield must include a reference to the regulation(s) to which the permit shield applies.[32] Otherwise, granting a permit shield for requirements found in other areas of the permit could lead to confusion about whether the referenced applicable requirements are actually part of the permit shield. Therefore, the EPA also recommends the Department ensure that each permit shield is limited to the applicable requirement(s) to which the permit shield is intended to apply.

Recommendation: The EPA commends the Department for its efforts in referencing the regulatory basis for applicable requirements in each permit. The EPA recommends the Department ensure that each permit shield granted in a permit is placed in the correct section

[32] For example, Drake Cement permit 65587 contains a permit shield after each section in Attachment "B." The permit shield for Section II states that compliance with Section II "shall be deemed compliance with" among other requirements, 40 CFR 63.1346(g). However, the 40 CFR 63.1346(g) requirements are found in conditions III.D.1 through III.D.3. Therefore, the permit shield for 63.1346(g) should be placed in Section III instead of Section II.

DRAFT

of the permit and limited to the applicable requirement(s) to which the permit shield is intended to apply.

3. Monitoring

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

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

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

3.1 **Finding:** The ADEQ successfully implements the CAM requirements.

Discussion: The CAM regulations, codified in 40 CFR Part 64, apply to title V sources with large emission units that rely on add-on control devices to comply with applicable requirements. The underlying principle, as stated in the preamble, is "to assure that the control measures, once installed or otherwise employed, are properly operated and maintained so that they do not deteriorate to the point where the owner or operator fails to remain in compliance with applicable requirements" (62 FR 54902, October 22, 1997). Per the CAM regulations, 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 with add-on control devices.

DRAFT

Based on interviews conducted during our site visit, we found that many permitting staff did not have experience working on CAM plans or received training on CAM. In our review of Department permits we found that when CAM applies the Department generally explains CAM applicability correctly and adds appropriate monitoring conditions to title V permits for sources subject to CAM.[33] However, CAM is not a standard section of the Department's TSDs and we found examples where CAM is not discussed in renewal and significant revision actions.[34] CAM applicability can evolve over time as a facility makes changes, and thus its applicability should be verified to ensure compliance.

Recommendation: The ADEQ should continue to implement the CAM rule as it processes permit renewals and significant modifications, and ensure its applicability is reviewed and discussed in the TSDs for these actions. The EPA recommends that the ADEQ update their TSD templates to include a standard section regarding CAM applicability. Additionally, CAM training may be needed for some staff.

3.2 **Finding:** The ADEQ includes sufficient monitoring to ensure compliance with applicable requirements.

Discussion: The title V program and the ADEQ's EPA-approved title V regulations have provisions that require permits to contain monitoring that is sufficient to demonstrate compliance with all applicable requirements. When an applicable requirement lacks sufficient monitoring, such as having only one time monitoring to demonstrate initial compliance or monitoring that is too infrequent to demonstrate compliance on an on-going basis, permitting authorities add "periodic monitoring" to fill the gaps in the applicable requirement. The ADEQ's rules requiring aforementioned periodic monitoring can be found in AAC R18-2-306.A.3.c.

The ADEQ includes detailed requirements in each title V permit that specifies the required monitoring and recordkeeping for the emissions units at the title V source. The monitoring includes requirements from CAM, applicable federal regulations (such as NSPS and NESHAPs), SIP rules, and, as appropriate, added periodic monitoring. Examples of periodic monitoring the ADEQ has added to title V permits include:

- Facilities subject to ADEQ's general opacity provisions found in AAC R18-2-702 – While R18-2-702 does not specify any monitoring requirements for opacity, ADEQ's title V permits contain a requirement requiring facilities to comply with the opacity provisions

[33] See Cholla Generating Station (Permit #65054), Freeport-McMorran Miami Inc (Permit #66039), Rillito Cement Plant (Permit #61522), Griffith Energy Power Plant (Permit #64101).

[34] Renewal Permits: EPNG – Alamo Lake (Permit #78418), EPNG – Hackberry (Permit #78436), EPNG – Wenden (Permit #61326). Significant Revisions: SRP – Coronado (Permit #63088), Superior Industries (Permit #72556), TEP – Springerville (Permit #60471).

DRAFT

in accordance with AAC R18-2-306.A.3.c. by setting opacity monitoring conditions in the title V permit.[35]

Recommendation: The ADEQ should continue to ensure title V permits contains sufficient monitoring to demonstrate compliance with all applicable requirements.

3.3 **Finding:** The ADEQ developed source-specific forms for semi-annual and annual monitoring reports.

Discussion: In our 2006 Evaluation, the EPA recommended that the ADEQ develop a source-specific form which identifies specific content that should be included in semi-annual monitoring reports.[36] As further discussed below in Finding 8.2, the ADEQ uses the myDEQ electronic database for submittal of compliance certifications and permit deviations. For compliance certifications, the sources can submit reports using approved templates that are also reviewed internally through the portal. Similarly, sources also have the ability to submit self-reported excess emission and permit deviation reports as required by their permits. The system has built in notifications to remind the sources to submit their reports and sends out emails if the reports are late.

Recommendation: The EPA commends the ADEQ's effort for automating the semi-annual and annual monitoring reporting process.

4. Public Participation and Affected State Review

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

The public notice must, at a minimum: identify the affected 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

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[35] See Cholla Generation Station (permit #65054), Lhoist North America (permit #79199), Drake Cement Plant (permit #65587).

[36] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 3.4.

DRAFT

comment procedures; and the time and place of any hearing that may be held, including procedures to request a hearing. See 40 CFR 70.7(h)(2).

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

4.1 Finding: The ADEQ provides public notices of its draft title V permitting actions on its website.

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

In our 2006 Evaluation, we encouraged ADEQ to develop a policy or guidance document that informs staff of the need to routinely notify affected states of relevant permitting activities and that its website should have the most recent permitting information available.[37] This information could include proposed and final title V permits, technical support documents, citizen petition procedures, responses to public comments, and general Title V information and guidance.

Currently, the Department website provides general information to the public and regulated community regarding the ADEQ permitting program.[38] The public can find information regarding the permitting process, whether a permit is needed for an operation, how to obtain a permit, application forms, and information about related programs that inform the Department's permitting program.

The ADEQ's website also provides a list of active projects that are in the public comment period along with the corresponding draft permit, TSD, and public notice, and information on how to comment electronically or by mail.[39] However, the website does not provide the public with access to final permits.

[37] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 4.1.

[38] https://azdeq.gov/node/6372

[39] https://azdeq.gov/notices

The ADEQ also maintain mailing lists for title V public notice and notify affect states, usually within the 50 kilometers of the Source and sometimes join tribal counsel meetings.

Recommendation: We recommend that the Department continue to provide the public information related to title V permits via their website. We also recommend posting final permits on the Department website for easier public access.

4.2 **Finding:** The ADEQ should improve notification regarding the public's right to petition the EPA Administrator to object to a title V permit.

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

ADEQ R18-2-307 contains information about the public's right to petition the EPA Administrator to object to a title V permit. However, the Department's draft and final permit packages,[41] including the public notice for the permit action, do not inform the public of the right to petition the EPA Administrator to object to a title V permit. We made the same finding during our 2006 Evaluation.

Recommendation: The EPA strongly recommends that the ADEQ revise its public notice templates to inform the public of the right to petition the EPA Administrator to object to the issuance of a title V permit.

4.3 **Finding:** The ADEQ uses a multi-pronged approach to public participation to reach as many people as possible. For example, the ADEQ translates public notices and publications into Spanish.

Discussion: The ADEQ's jurisdiction includes sources located throughout Arizona. The EPA prepared a map of linguistically isolated communities within ADEQ's jurisdiction in which title V permits have been or may be issued (see Appendix D). The ADEQ uses a multi-pronged approach to public participation to reach as many people as possible by providing translation and language interpretation services to those communities during the title V permitting process as well as intensive community engagement based on the ADEQ staff knowledge and experience.

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

[41] In an April 18, 2019 letter responding to comments on a specific title V permit action, we found an example where ADEQ notified a commenter of the right to petition the EPA Administrator. However, all members of the public should be informed of this right prior to submitting comments.

DRAFT

Recommendation: The EPA encourages the ADEQ to continue this practice.

4.4 Finding: The ADEQ's general practice is to conduct a concurrent public and EPA review. If comments are received during the 30-day public review period, the 45-day EPA review is restarted and run sequentially to the public review period, not concurrently.

Discussion: Per section 505(b) of the CAA and 40 CFR 70.8, state and local permitting agencies are required to provide proposed title V permits to the EPA for a 45-day period during which the EPA may object to permit issuance. The EPA regulations allow the 45-day EPA review period to either occur following the 30-day public comment period (i.e., sequentially), or at the same time as the public comment period (i.e., concurrently). When the public and the EPA review periods occur sequentially, permitting agencies will make the draft permit available for public comment, and following the close of public comment, provide the proposed permit and supporting documents to the EPA.[42] When the public and the EPA review periods occur concurrently, a state or local agency will provide the EPA with the draft permit and supporting documents at the beginning of the public comment period. As codified in 40 CFR 70.8, if the ADEQ receives comments from the public during the 30-day public review period, the 45-day EPA review would be restarted to allow the ADEQ to prepare responses to the public comments and provide the response to comments, and an updated permit and TSD to the EPA.

Recommendation: The ADEQ should continue its practice to prepare a response to comments, make any necessary revisions to the draft permit or permit record, and submit the proposed permit and other required supporting information to restart the EPA review period.

DRAFT

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

5. Permit Issuance / Revision / Renewal

This section focuses on the permitting authority's progress in issuing initial title V permits and the Department'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 title V permits. The EPA, as an oversight agency, is charged with ensuring that these deadlines are met as well as ensuring that permits are issued consistent with title V requirements. Part 70 describes the required title V program procedures for permit issuance, revision, and renewal of title V permits. Specifically, 40 CFR 70.7 requires that a permitting authority take final action on each permit application within 18 months after receipt of a complete permit application, except that action must be taken on an application for a minor modification within 90 days after receipt of a complete permit application.[43]

5.1 Finding: The ADEQ has no title V permit backlog and issues initial and renewal permits in a timely manner.

Discussion: At the time of our most recent site visit, the ADEQ had 49 title V sources and 96 synthetic minor sources. We found that the Department's internal procedures produced a solid record of timely permit issuance. The Department does not anticipate any delays in processing renewal applications.

The ADEQ's permit processing time has improved since our 2006 Evaluation. The ADEQ attributes this improvement to development of "standard work", permit templates, and raising potential issues to management early. Per regulatory requirements, permitting authorities have 18 months to issue a significant revision, 90 days for minor permit revisions, and 60 days for administrative amendments. The ADEQ has an aggressive internal deadline for its major source permitting actions: 150 days for significant permit revisions, 65 days for minor permit revisions, and 2 days for administrative amendments.

In our 2006 Evaluation, the most significant obstacles to timely issuance of title V permits were obtaining information from sources and relatively high staff turnover.[44] During interviews for this program evaluation, many staff mentioned the most significant obstacle is waiting for facilities to pay fees. The ADEQ does not issue a final permit until the facility pays the permit fee, which can delay the overall permit issuance timeline.

We also note that the ADEQ's internal deadlines are significantly shorter than the federal requirements. Some concerns were raised by staff that strict adherence to these targets may be resulting in a reduction in the quality of the permits, as further discussed in Finding 7.8.

[43] See 40 CFR 70.7(a)(2) and 70.7(e)(2)(iv).
[44] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 2.5.

DRAFT

Recommendation: The Department should continue the practices that allow it to process title V permits within the timeframes established in title V regulations while assuring that the quality of the permit is not compromised (See recommendations in Section 2 and Finding 7.8).

5.2 Finding: ADEQ R18-2-306.01, "Permits Containing Voluntarily Accepted Emission Limitations and Standards," allows sources to voluntarily limit their potential to emit to avoid title V applicability.

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

Synthetic minor limits must be enforceable as a practical matter, meaning they are both legally and practicably enforceable.[45] According to EPA guidance, for emission limits in a permit to be practicably enforceable, the permit provisions must specify: 1) a technically-accurate limitation and the portions of the source subject to the limitations; 2) the time period for the limitation; and 3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting.[46]

In response to a petition regarding the Hu Honua Bioenergy Facility, the EPA stated that synthetic minor permits must specify: 1) that all actual emissions at the facility are considered in determining compliance with its synthetic minor limits, including emissions during startup, shutdown, malfunction or upset; 2) that emissions during startup and shutdown (as well as emission during other non-startup/shutdown operating conditions) must be included in the semi-annual reports or in determining compliance with the emission limits; and 3) how the facility's emissions shall be determined or measured for assessing compliance with the emission limits.[47]

ADEQ R18-2-306.01 allows major sources to voluntarily limit their PTE to below major source thresholds to avoid the requirement to obtain a title V permit. Title V sources are required to demonstrate that their PTE is permanently reduced either through a facility modification or by accepting an enforceable permit condition to limit their PTE.

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

[46] *Ibid*.

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

At our request, the ADEQ provided us with examples of synthetic minor permits.[48] The permits and TSDs generally provide a summary of why the source has requested a synthetic minor permit. However, most TSDs do not explain the applicable major source thresholds and how the source has taken limits to demonstrate synthetic minor source status. Furthermore, the permits contain no conditions specific to the pollutant which is subject to a synthetic minor limit.[49] The lack of such information makes it difficult for the EPA and the public to understand the basis behind the synthetic minor permit limit, what the applicable major source threshold is, and how compliance with the major source threshold is assured. As such, the permits do not clearly contain practically enforceable provisions which ensure the facilities do not emit above the applicable major source thresholds for specific pollutants.

Recommendation: The EPA recommends that the ADEQ include a section in the TSD to discuss synthetic minor limits that includes the applicable major source threshold, significance threshold, and/or permitting exemption threshold. Furthermore, as mentioned above, if a facility voluntarily accepts limits to avoid major source classification through a synthetic minor permit, the synthetic minor permit must contain practically enforceable conditions which ensure facility-wide emissions will not be at or above major source thresholds. The ADEQ should also consider the criteria from the Hu Honua petition response in future actions when issuing synthetic minor permits.

DRAFT

[48] The permits reviewed included the following types of facilities: a steel reshaping facility; two copper mining and processing plants; a chemical synthesis and repackaging facility; and a pet food manufacturing facility.

[49] Although some permits contain language that suggest certain pollutants have a synthetic minor limit, it is difficult to determine which permit conditions limit emissions below the major source threshold. For example, the Nestle Purina PetCare Company, Permit No.74605, states the facility has a synthetic minor limit for PM_{10}. However, the permit does not contain any PM_{10}-specific emission limits, monitoring, recordkeeping, or reporting requirements.

6. Compliance

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

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

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

Discussion: The EPA's 2016 Clean Air Act Stationary Source Compliance Monitoring Strategy[50] recommends that permitting authorities perform Full Compliance Evaluations (FCEs) for most title V sources at least every other year. For the vast majority of title V sources, the EPA expects that the permitting authority will perform an onsite inspection to determine the facility's compliance status as part of the FCEs. During interviews, Department inspectors reported that the Department's major sources are inspected once a year. Thus, when permitting staff are working on a title V permit revision, they are able to check the compliance status of the facility as determined by the most recent inspection.

Recommendation: The EPA commends the ADEQ for performing FCEs of all title V sources annually.

6.2 Finding: The ADEQ's permitting and compliance managers communicate effectively with each other and meet routinely to discuss programmatic issues.

Discussion: The ADEQ's compliance manager and permit manager hold routine meetings to discuss permitting and compliance issues. Similarly, permitting staff indicated compliance staff are readily accessible if there are any questions regarding a source or a permit. However, as stated in Finding 2.1, the Compliance Unit's ability to make corrections to a permit may be hampered if their review of a draft permit is conducted after the permit is public noticed.

Recommendation: The EPA commends the ADEQ for good communication between permitting and compliance management and staff. We encourage the ADEQ to continue information sharing between permitting and compliance staff and managers. However, we recommend

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

DRAFT

including a compliance review of a permitting action prior to the public notice for a more thorough agency review (see Finding 2.1).

6.3 **Finding:** The Permits Unit reviews compliance reports before a permit renewal is issued and discusses compliance issues with the Compliance Unit.

Discussion: The ADEQ's TSDs for renewal permits have a section called "Compliance History" in which the permitting staff review compliance reports, inspection reports, and performance tests in the past five years of the permit. Permitting staff determine whether there are any open compliance cases and follow up with the Compliance Unit to determine whether the compliance requirements are being met. The Department usually relies on compliance orders when a facility is out of compliance. Compliance orders are where the Department and the permittee work collaboratively to establish milestones to return the permittee to compliance, as stated in A.R.S. 49-461. Compliance and permitting staff were generally not aware of any title V permits with compliance schedules.[51]

Recommendation: The ADEQ should continue to use all available tools to ensure facilities out of compliance return to compliance and continue its practice of reviewing a facility's compliance history as part of permit renewal actions.

6.4 **Finding:** The Permit Unit reviews all compliance and deviation reports and uses an internal decision matrix to determine whether or not to escalate issues to the Compliance Unit.

Discussion: Prior to inspections, the Compliance Unit reviews deviation, semiannual, and annual reports, but generally does not otherwise see deviations or potential violations unless the Permits Unit escalate instances of noncompliance to their unit. The Permits Unit follows a decision matrix to refer potential violations to the Compliance Unit. However, the decision matrix recommends a Notice of Violation (NOV) for situations that have been identified as high-priority violations by the EPA. Most interviewees agreed with the ADEQ's approach of working with sources to fix minor deviations and violations by issuing Notice of Opportunity to Correct Deficiencies (NOCs) instead of issuing NOVs. However, the interviewees were concerned that the emphasis on returning sources to compliance without monetary penalties makes it more difficult for sources to take compliance seriously. Additionally, Compliance Unit staff are generally not involved when issues are recommended for NOVs because they are handled by management. As a result, compliance staff are often unaware when NOVs are issued.

As noted in the EPA Region 9 enforcement division's July 29, 2015 State Review Framework (SRF) for ADEQ,[52] "the NOV/NOC decision matrix raises concern and indicates a lack of adequate responsiveness/seriousness to both reporting violations and emission violations that exceed the limit. The EPA acknowledges that Arizona lacks administrative penalty authority which constrains its ability to assess penalties for many medium and smaller cases. Lack of

[51] See 40 CFR 70.5(c)(8) and 70.6(c)(3), (4).

[52] Appendix F.

DRAFT

administrative authority, however, does not relieve the state of its obligation to pursue timely and appropriate enforcement actions."

Recommendation: The EPA recommends the Department continue to follow the EPA's guidance on high priority violations, but we also recommend the Department evaluate whether its overall approach to compliance and enforcement ensures NOVs are not handled arbitrarily.

7. Resources and Internal Management

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

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

7.1 **Finding:** The ADEQ permitting and compliance staff report that they receive effective legal support from both the Attorney General's office as well as an in-house attorney.

Discussion: The ADEQ relies mostly on in-house attorneys that are more knowledgeable in complex air quality issues to represent and advise the ADEQ on air quality permitting and enforcement matters. They also participate in any meeting at which the ADEQ meets with a permittee or others who have legal counsel.

During our site visit, interviewees reported that they receive effective legal support from both the Attorney General's office and its in-house attorney. The in-house attorney meets with the ADEQ staff and managers about once a month.

Recommendation: The ADEQ should continue to ensure that it receives effective legal support.

DRAFT

7.2 Finding: In preparing its initial response to the EPA's evaluation questionnaire and during the EPA's site visit, the ADEQ was unable to provide information identifying the revenue and expenses associated with the ADEQ's title V permitting program.[53]

Discussion: The Part 70 regulations require that permit programs ensure that the collected title V fees are adequate to cover title V permit program costs and are used solely to cover the permit program's costs.[54] The ADEQ uses the Air Permits Administration Fund (APAF) to administer funding to their title V and non-title V permitting programs. At the conclusion of the EPA's 2006 title V evaluation effort[55] the ADEQ indicated that they had transitioned to accounting practices that allowed for easy identification of non-title V revenue and expenses, and title V revenue and expenses. However, this distinction proved to be challenging during the current evaluation effort. In preparing its initial response to the EPA's evaluation questionnaire and during the EPA's site visit, the ADEQ was unable to provide information identifying the revenue and expenses associated with the ADEQ's title V permitting program. After the EPA's site visit, the ADEQ provided the EPA with suitable documentation to support the conclusion that the ADEQ title V permitting program is effectively funded and implemented.

As noted in the 2006 Report, the ability to distinguish title V funds from non-title V funds is essential to ensuring that an implementing agency's title V permitting program is funded in a sustainable manner in accordance with Clean Air Act Section 502(b)(3) and longstanding associated implementation guidance.[56] In addition, the ADEQ's inability to distinguish title V permitting fee funds from other funds in the APAF may have made the funding associated with the sustainable implementation of the ADEQ title V permitting program more susceptible to diversion for purposes wholly unrelated to the sustainable administration of the ADEQ title V permitting program (see finding 7.3 below).

At the time of the site visit, the ADEQ acknowledged that it must be able to identify title V funds from non-title V funding in the APAF. The ADEQ further committed to separately identifying and tracking title V from non-title V funds in the APAF and was already working towards that goal. We worked closely with ADEQ over the past several months to develop a solution to these issues and identified a several actions. See Finding 7.3 below with a summary of the actions.

Recommendation: The ADEQ must be able to identify tile V funds from non-title V funding in the APAF and should complete these efforts per their commitment, as quickly as possible to assure appropriate tracking of title V funds.

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[53] ADEQ was able to identify that the title V permitting revenue and expenses are a component commingled with other permitting funds in the Air Permitting Administration Fund (APAF).

[54] See 40 CFR 70.9(a).

[55] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 7.4.

[56] See EPA's August 4, 1993 initial fee guidance, "1993 fee schedule guidance." See also the EPA's March 27, 2018 guidance documents "Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V" and "Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70."

7.3 **Finding:** From 2008 to 2020, portions of the ADEQ permitting fee revenue from the Air Permits Administration Fund (APAF) was diverted from the ADEQ permitting program to support other programs and the Arizona General Fund.

Discussion: As discussed in Finding 7.2, any fee required by a Part 70 program must "be used solely for the permit program costs." Working with the ADEQ, the EPA identified several instances of air permit funding transfers from the APAF to other programs unrelated to the operation of the ADEQ title V program. Once the transfers were identified, the ADEQ and the EPA analyzed the amounts diverted over the timeframe covering State fiscal years 2008 through 2020 to determine if the funding amounts diverted from the APAF to other programs were greater than those non-title V funds contained in the APAF. Based on the analysis performed, while there may have been certain timeframes where the funds diverted were greater than the non-title V funds available in the APAF, over the entire timeframe, the amounts diverted from the APAF were such that the diversions could reasonably be assumed to have all been from the non-title V funding stream in the APAF.[57]

In further discussion with the ADEQ, the EPA learned that the diversions or transfers out of the APAF are performed by the State legislature with input from the ADEQ. If future transfers from the APAF will occur in this manner, it is necessary to change this process to ensure title V program fees are not transferred and are used solely for title V permit program costs. In the meantime, the EPA intends to monitor, with the ADEQ, this process once other measures are implemented, including establishing a department policy that prevents the transfer of title V funding from the APAF.

Recommendation: The ADEQ must change its funds tracking system to address this finding. In discussions and emails with EPA staff, the ADEQ has committed to accurately track title V revenues and expenditures to ensure the title V program is effectively funded and implemented from the APAF going forward.[58]Thus, we recommend that ADEQ work closely with EPA to develop such changes. The changes to the ADEQ's funds tracking system must be consistent with the requirement that fees collected for the title V program are only used for funding the title V program (see 40 C.F.R. Part 70.9(a)). The EPA and the ADEQ will monitor the APAF funds to determine the effectiveness of the new tracking system each year for the next five years and will work during this timeframe to ensure that the legislature is aware of the requirements found in the discussion for this finding consistent with 40 C.F.R. Part 70.9(a). To allow EPA to review the results of the new tracking system, we request that the ADEQ submit to the EPA a report that is consistent with the type of analysis found in Appendix E of this report within 3 months of the end of each State fiscal year for the next five years.[59] In the event that the EPA

[57] For a detailed analysis of this information, please see Appendix E.

[58] See Appendix E of this report.

[59] The first report should be submitted to EPA by September 30, 2021 and cover the timeframe July 1, 2020 through June 30, 2021.

DRAFT

determines that the new tracking system is insufficient at any point during the reporting timeframe (or thereafter) described in this finding, the ADEQ commits to working with the EPA to develop a process to ensure title V revenues and expenses are accurately tracked to ensure compliance with the Clean Air Act.[60]

7.4 **Finding:** There is a process to escalate potential issues and empower staff to solve problems.

Discussion: The Department's staff report that supervisors and management are available for one-on-one consultation on title V permitting issues. Regular daily and weekly three-hour group meeting discussions are held with staff, supervisors and management to resolve any potential issues. However, staff also indicated that it can be hard to find available time to meet with managers one-on-one due to their busy schedules. Some issues are not going to be relevant to the entire unit if those issues are brought up during group unit meetings and extend the unit meeting longer than desired.

Recommendation: The EPA commends the ADEQ for empowering staff and encourages the ADEQ to balance one-on-one and group discussions on title V permitting issues.

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

Discussion: Based on our interviews, Department staff indicated that in-house training (classroom and one-on-one mentoring, for example) and some outside training is offered. The ADEQ's partnership with the Western States Air Resources Council has allowed the permitting staff to attend training sessions of varying complexity. In general, most staff agree they could get training on what they need, but some indicated they would like to be able to take refresher trainings. Inspectors would like more source-specific training, refreshers, and guidance on what management is looking for in inspection reports.

Recommendation: The Department's current training program provides a solid foundation for the title V program but could be enhanced by encouraging refresher trainings. Additionally, inspector trainings related to specific source categories and inspection report content is also recommended.

7.6 **Finding:** Most permitting staff are aware of environmental justice (EJ) but are not familiar with how the Department's EJ principles affect their work.

[60] See EPA's March 27, 2018 guidance documents "Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V" and "Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70"

Discussion: The ADEQ's EJ program was recently enhanced to show it met the requirements of 40 CFR part 7 and other nondiscrimination regulations, policy and guidance. The components of the ADEQ Nondiscrimination Program[61] include:

- A notice of nondiscrimination under the federal nondiscrimination statutes;
- Grievance procedures for complaints filed under the federal nondiscrimination statutes;
- Identification of a Department Nondiscrimination Coordinator and his/her role;
- An assessment of the ADEQ's obligation to provide access to LEP and disabled persons; and
- Public participation procedures.

The EPA has separately reviewed this program and has determined that the ADEQ has in place the appropriate foundational elements of a non-discrimination program.[62]

During our interviews of ADEQ staff, some of the permitting staff were unfamiliar with how the Department's EJ program impacts permitting.[63] Better understanding by ADEQ staff of the EJ program's impacts on permitting would likely improve implementation of both the permitting and EJ programs.

Recommendation: The ADEQ should continue to implement its EJ program and find ways to increase internal awareness among its permitting and compliance staff regarding the EJ program and how their work is tied to it.

7.7 Finding: The ADEQ focuses on succession planning in the event of unexpected retirements or departures.

Discussion: The Permits Unit and Compliance Unit both have several staff members with less than five years of experience and only a couple of employees with more than ten years of experience. However, the ADEQ is committed to promoting succession planning so that mission functions are not disrupted by staff turnover. Over the course of the last couple of years, the Air Quality Division reviewed various functions and identified certain functions as being "single points of failure." While many of the tasks within the Division can be fulfilled by alternate resources, there are certain functions that are unique by virtue of the complexity of the task or the niche nature of the job skill that is necessary. The Division identified two positions with the Facilities Emission Control Section as single points of failure--the role of an Agricultural Best Management Practices Inspector and that of the Asbestos NESHAP Inspector. To address the situation, the group prepared countermeasures. At a broad level, the countermeasures

[61] See ADEQ "Nondiscrimination Program Plan, January 2017", revised January 10, 2018 and provided in Appendix G of this report.

[62] See letter from Lilian S. Dorka, Director, External Civil Rights Compliance Office, Office of General Counsel, to Misael Cabrera, P.E., Director, Arizona Department of Environmental Quality, dated July 7, 2017.

[63] Although there is a general awareness that language accessibility in the permitting program has improved. See finding 4.3 above.

DRAFT

involved the development of “standard work” for all possible tasks and the cross training of other personnel to fulfill such tasks. The cross training involves on the job training with the subject matter expert as well as other external training opportunities.

The Department also offers incentives for employees who are considering retirement over the short-term. The Department offers a cash incentive for employees who can provide 6 months of advance notice. The idea is to encourage retiring staff to provide advance notice so the Department can use the 6 months to hire a replacement and afford the new hire time to learn from the retiring senior staff member so that there is an opportunity for the transfer of institutional knowledge. Additionally, the Permits Unit ensures that any permitting staff that has provided notice of retirement communicates with management regarding active permit work, historical permit information, and incomplete action items. This includes ensuring that “standard work” exists in the case that any work is the sole responsibility of the staff member.

Following the implementation of the Arizona Management System and the general drive to promote problem solving at a staff level, the ADEQ management identifies leaders of the future within the agency and mentors them by offering them an opportunity to work in the ADEQ Office of Continuous Improvement. The opportunity allows them to develop a skill set that makes them viable candidates for future ADEQ managerial opportunities. There is also a structured cadence of one-on-one meetings between staff and their managers to drive dialogue about how to facilitate their growth. For example, these discussions can include the GROW model (Goals, Reality, Obstacles/Options and Way Forward). Using this process, ADEQ strives to complement the transactional nature of day to day work with a longer-term vision to cultivate and develop future leaders.

Recommendation: The EPA commends the ADEQ on its focus on succession planning.

7.8 **Finding:** The ADEQ management sets aggressive timeframes for staff to process title V permitting actions.

Discussion: As discussed in Finding 5.1, the ADEQ does not have a backlog of title V actions and sets internal goals for processing permit actions that are shorter than the timeframes established in Part 70 and the ADEQ’s approved Part 70 program. During interviews, permitting staff indicated these goals can cause confusion and/or stress.

Overwhelmingly, staff in the Permits Unit support issuing timely permit actions and developing methods for improvement. However, numerous staff also indicated that the short timeframes instituted by management appear to have been set arbitrarily and can lead to mistakes (see, e.g., findings in Section 2). In addition, staff feel rushed to complete title V renewals, but once complete, their permit package may remain unissued for weeks or longer waiting for the permittee to pay fees before a final permit can be issued. Staff questioned the benefit of rushing to complete such actions when they could spend more time developing a better product and making fewer mistakes. Compliance staff also indicated that they often find

mistakes in permits because permitting staff are rushed and copy and paste information without updating it.

Most of the staff in the Permits Unit have only a few years of experience, which could be contributing to the mistakes being made and to the confusion and/or stress related to internal goals. We did not find examples where the ADEQ's permit processing goals prevented staff from taking extra time to complete work, beyond the internal timeframes, when faced with challenging permitting issues. The ADEQ's management indicated they are aware that the internal goals can be stressful for some staff, which is a portion of performance evaluations, but it is not used as a basis to dismiss staff.

Recommendation: The EPA recommends the ADEQ continue to ensure timely issuance of permits. We recommend reviewing internal procedures for potential actions that address the lack of experience among staff and help improve the quality and consistency of title V permits. We also recommend that management better communicate to staff its expectations related to the balance between timelines and completing work accurately.

8. Records Management

This section examines the system the ADEQ has in place for storing, maintaining, and managing title V permit files. The contents of title V permit files are public records, unless the source has submitted records under a claim of confidentiality. The ADEQ has a responsibility to the public in ensuring that title V public records are complete and accessible.

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

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

8.1 **Finding:** The ADEQ's Records Center has a central file system in the building and is well managed. It is a great improvement from our 2006 Evaluation finding.

Discussion: In our 2006 Evaluation finding,[64] the EPA found the ADEQ's central file system poorly managed and it was difficult to obtain requested folders and documents. During the current evaluation, the EPA was able to obtain requested files in a reasonable time. The ADEQ Records Center also maintains the permitting files in accordance with the ADEQ file retention

[64] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 9.1.

policy.[65] The ADEQ's file retention policy keeps permitted major and synthetic minor source facility files permanently.

Recommendation: The EPA commends the ADEQ on its major improvement in organizing and retaining physical title V permit records.

8.2 **Finding:** The ADEQ uses an electronic database to track title V permits effectively, issue general permits, and assist in compliance reporting.

Discussion: The ADEQ uses several databases to track multiple activities within the Department. AZURITE (Arizona Unified Repository for Information Tracking of the Environment) is the Department's internal database, a java-based software that tracks all permitting "events" that go through the ADEQ. Some "events" include application receive/issuance dates, public notice/participation dates, and billables. In addition, it generates report and inspection IDs, tracks emission reduction credits, and produces reports including monitoring, compliance, and performance testing dates. The system does not store any documentation and is only for internal consumption. Almost all staff and managers agree that even though the system collects the data that is needed, it is a clunky and outdated system that either needs updating or should be moved to a newer system.

The ADEQ also uses myDEQ, an external-facing web-based portal developed in-house that has been in use since 2015. In 2019, ADEQ launched two new modules for submittal of compliance certifications and permit deviations. For compliance certifications, the sources can submit reports using approved templates that are also reviewed internally through the portal. Similarly, sources also have the ability to submit self-reported excess emissions and permit deviation reports as required by their permits. The system has built in notifications to remind the sources to submit their reports and sends out emails if the reports are late. In addition to compliance reporting, sources are also able to submit general permit applications and receive automatically generated general permits through the myDEQ. This streamlined process reduces the amount of time spent on general permit issuances.

The ADEQ also uses the Retail Integration Cloud Service (RICS) as their fee management system to process invoices. RICS processes information from AZURITE such as updated fees/rates, billables and annual fees.

In our 2006 Evaluation,[66] the EPA recommended some potential improvements including storing the actual permit documents in the database system and linking fee information from accounts receivable so the ADEQ could access data such as payment of permit fees.

The ADEQ electronic files are currently still kept in the Department shared drive, sorted by facility name and then action name. The EPA encourages ADEQ to investigate the feasibility of

[65] https://apps.azlibrary.gov/records/state_rs/Environmental%20Quality.pdf

[66] https://www.epa.gov/sites/production/files/2015-07/documents/adeq-t5-eval-final.pdf, Finding 9.2.

DRAFT

making all permit documents accessible through one of its database systems. This change would facilitate information sharing and ensure access to the correct version of the permit. The previous finding on linking fee information from accounts receivable has been addressed.

Recommendation: The EPA commends the ADEQ's efforts in creating myDEQ and automating many of the facility reporting functions. However, the EPA still recommends linking permit data to actual datafiles and linking fee information from accounts receivable so the ADEQ can access data such as payment of permit fees (see also Findings 7.2 and 7.3 above).

Appendix A. Air Pollution Control Agencies in Arizona
Appendix B. Title V Questionnaire and the ADEQ Responses
Appendix C. U.S. EPA Statement of Basis Guidance
Appendix D. Map of Linguistically Isolated Households in the ADEQ
Appendix E. Fee Information
Appendix F. 2015 State Review Framework
Appendix G. Nondiscrimination Program Plan, January 2017
Appendix H. The ADEQ Comments on the Draft Report
Appendix I. The EPA Response to the ADEQ Comments

DRAFT

Attachment B

ADEQ Arizona Department of Environmental Quality

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TECHNICAL SUPPORT DOCUMENT

TECHNICAL REVIEW AND EVALUATION
OF APPLICATION FOR
AIR QUALITY PERMIT No. #####

I. INTRODUCTION

This <<Class II synthetic minor, Class I, Class II>> <<Renewal,SPR, new, etc.>> permit is for the <<construction and, continued>> operation of <<Controlling enterprise name>>'s <<place name>>. Permit No. <insert permit#>> renews and supersedes Permit No. <<insert old permit>>.[JP1]

A. Company Information

Facility Name:

Mailing Address:

Facility Location:

B. Attainment Classification

<<Discuss attainment Classification>>

II. PROCESS DESCRIPTION

A. Process Equipment

B. Control Devices

C. Process Flow Diagram(s)

III. LEARNING SITE EVALUATION

<<Sample>> In accordance with ADEQ's Environmental Permits and Approvals near Learning Sites Policy, the Department is required to conduct an evaluation to determine if any nearby learning sites would be adversely impacted by the facility. Learning sites consist of all existing public schools, charter schools and private schools the K-12 level, and all planned sites for schools approved by the Arizona School Facilities Board. The learning sites policy was established to ensure that the protection of children at learning sites is considered before a permit approval is issued by ADEQ.

This <<permitting action>> will not result in any increase in emissions as there are no changes to any equipment. Hence the facility is exempt from the learning sites evaluations.

IV. COMPLIANCE HISTORY[JP2]

Discuss the following:

1. Number of report reviews the Department conducted.

2. A brief discussion of any excess emissions or permit deviation reports (these can be referenced in the NOC/NOV) below.

3. Summarize any formal enforcement (e.g. NOCs, NOVs, consent orders) and how they have been closed. An example of a write up for an NOV and consent order can be seen below.

4. Compliance schedules (if applicable).

5. The number of inspections that were conducted during the permit term.

6. Performance tests conducted and results:

Table 1: Performance Test Results

Emission Unit	Pollutant	Date of Test	Results of Performance Test

An example has been provided below:

B. Case Number 33475

A Notice of Violation was issued to APCC on December 8, 2004, for three alleged violations based on an inspection conducted on August 24, 2004 (Inspection ID: 52711). The significant violations are as follows:

1. During the inspection on August 24, 2004, the six minute opacity average of fugitive dust coming off this drop point of an unmarked Belt Conveyor connected to the B9-DC5 Dust Collector was 25.2 percent. This was above the 20 percent limit referenced in the permit.

2. During the inspection on August 24, 2004, the six minute opacity average of fugitive dust coming off the drop point of the B6-BC1 Belt Conveyor was 33.9 percent. This is in excess of the 20 percent opacity limit.

3. Failure to clearly mark all equipment covered by the permit with serial number or other equipment number that is also listed in the permit to identify that piece of equipment. According to the factual description of the violation, during the August 24, 2004, inspection of the B9 Screen building, the inspection team could not clearly identify the process and dust control equipment associated with the "Stacker/Reclaimer and Storage Area" and with the "Raw Feed Materials to Rock Storage" list of equipment as identified in the equipment list of the permit.

The facility's deadlines to achieve compliance were February 9 and April 10, 2005. The facility responded on February 1 and April 11 and 12, 2005. Compliance was documented and the NOV was closed on May 18, 2005. The case was closed on October 12, 2006, and

the violations from this case were resolved under Consent Judgment Docket No. CV2006-016354.

C. Consent Judgment Docket No. CV2006-016354

All the above cases resulted in a complaint and consent judgment being filed against Arizona Portland Cement Co. for allegations contained in the Notices of Violation associated with these cases and any alleged violations of A.R.S. Title 49, Chapters 2 and 3, and regulations promulgated thereunder.

On December 27, 2006, Arizona Portland Cement Co. paid a civil penalty of $300,000. Additionally, Consent Judgment Docket No. CV2006-016354 required the facility to perform various Supplementary Environmental Projects (SEPs) in the community of Rillito which amounted to $89,000.

V. EMISSIONS

<<Discuss how the PTE was calculated (AP-42, using performance testing results, any other supplementary documents)>>

The facility has a potential-to-emit (PTE) more than the significant/major source thresholds of <<what pollutant(s)>>. The facility's PTE is provided in Table 2 below:

Table 2: Potential to Emit (tpy)

Pollutant	Emissions from (latest permitting action)	Change in Emissions [JP3]	Emissions	Permitting Exemption Threshold [JP4]	Significant Thresholds [JP5]	Major/Minor [JP6] NSR Triggered?
NO_X				20	40	
PM_{10}				7.5	15	
$PM_{2.5}$				5	10	
CO				50	100	
SO_2				20	40	
VOC				20	40	
Pb				0.3	0.6	
HAPs				N/A	10 (single)/ 25 (combined)	
GHG (CO_2e) [JP7]				--	75,000[JP8]	

VI. MINOR NEW SOURCE REVIEW (NSR)[JP9]

Minor new source review is required if the emissions of a new source have the potential to emit any regulated air pollutant at an amount greater than or equal to the permitting exemption threshold (PET) in Table 2 above. [JP10]

Minor new source review is required if the emissions of any physical change or change in the method of an operation of an emission unit or stationary source that [increases the PTE of any regulated minor NSR pollutant by an amount greater than the permitting exemption threshold (PET)/results in an increase in emissions of any regulated minor NSR pollutant by an amount equal to or greater than the permitting exemption threshold (PET)] in Table 2 above. Emissions of <<what pollutants>> exceed the PET thus, the facility is subject to minor NSR requirements.[JP11]

The facility has the option to either implement reasonably available control technology (RACT) or conduct screen modeling to satisfy the requirements of minor NSR. The facility elected to implement RACT to satisfy the requirements of minor NSR. RACT is required for each emission unit that has the potential to emit any regulated minor NSR pollutant in an amount equal to or greater than 20% of the permitting exemption threshold.[JP12] The facility elected to undergo screen modeling to demonstrate compliance with minor NSR Requirements. A detailed discussion of the screen modeling analysis can be found in Section XIV below.[JP13]

<<Discuss what control measures will be used and how they meet the applicability to be considered RACT (RACT/BACT/LAER Clearinghouse, emission limit established by an NSPS/NESHAP, applicable requirement of A.A.C. Chapter 2, regulations adopted by a County under A.R.S. 49-479 that has been specifically identified as constituting RACT, RACT standard from a GP, RACT standard imposed on the same type of source within 10 years)>>

VII.

Major new source review is required if [
amount greater than 250 tpy/ a facility that has a PTE of any regulated NSR pollutant in an amount
]. A major modification is a physical change, or change in the operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net increase of that pollutant from the stationary source. The PTE of <<what pollutant>> exceeds [PSD/significant] thresholds, thus, the [project/facility] is subject to major NSR requirements.

As part of major NSR, the facility is required to implement best available control technology (BACT). The Department generally uses a "top-down" procedure when making BACT determinations. This procedure is designed to ensure that each determination is made consistent with the two core criteria for BACT: consideration of the most stringent control technologies available, and a reasoned justification, considering energy, environmental and economic impacts and other costs, of any decision to require less than the maximum degree of reduction in emissions. The framework for the top-down BACT analysis procedure used by the Department comprises five key steps as follows:

- Identify all control options;
- Eliminate technically infeasible control options;
- Characterize control effectiveness of technically feasible control options;

- Evaluate more effective control options; and
- Select BACT.

VIII. VOLUNTARILY ACCEPTED EMISSION LIMITATIONS AND STANDARDS[JP15]

The permit contains the following voluntary emission limitations and standards:

A. Ammonia Oxidation Plant 3 (AOP-3)

The facility has accepted a voluntary emission limit of 37.67 tpy of NO_X to avoid triggering new source review for a major modification. The limit was incorporated into Installation Permit No. 1229 issued in 1992.

IX. APPLICABLE REGULATIONS

Table 3 identifies applicable regulations and verification as to why that standard applies. The table also contains a discussion of any regulations the emission unit is exempt from.

Table 3: Applicable Regulations

Unit & year	Control Device	Rule	Discussion
Fugitive dust sources	Water Trucks, Dust Suppressants	A.A.C. R18-2 Article 6 A.A.C. R18-2-702	These standards are applicable to all fugitive dust sources at the facility.
Abrasive Blasting	Wet blasting; Dust collecting equipment; Other approved methods	A.A.C. R-18-2-702 A.A.C. R-18-2-726	These standards are applicable to any abrasive blasting operation.
Spray Painting	Enclosures	A.A.C. R18-2-702 A.A.C. R-18-2-727	These standards are applicable to any spray painting operation.
Demolition/renovation Operations	N/A	A.A.C. R18-2-1101.A.8	This standard is applicable to any asbestos related demolition or renovation operations.

X. PREVIOUS PERMIT REVISIONS AND CONDITIONS

A. Previous Permit Revisions[JP16]

Table 4 provides a description of the permit revisions made to Permit No. XXXXX during the previous permit term.

Table 4: Permit Revisions to Permit No. XXXXX

Permit Revision No.	Permit Revision Type[JP17]	Brief Description

B. Changes to Current Renewal[JP18]

Table 5 addresses the changes made to the sections and conditions from Permit No. <<insert old permit>>:

Table 5: Previous Permit Conditions

Section No.	Determination			Comments
	Added	Revised	Deleted	
Att. “A”		X		General Provisions: Revised to represent the most recent template language
Att. “B” Section I				Facility Wide Requirements: Revised to represent the most recent template language
Att. “C”		X		Equipment List: Revised to reflect the most recent equipment operating at the facility and to include equipment information provided.

XI. MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS

Table 6 contains an inclusive but not an exhaustive list of the monitoring, recordkeeping and reporting requirements prescribed by the air quality permit. The table below is intended to provide insight to the public for how the Permittee is required to demonstrate compliance with the emission limits in the permit.

Table 6: Permit No. XXXXX

Emission Unit	**Pollutant**	**Emission Limit**[JP19]		**Recordkeeping Requirements**	**Reporting Requirements**
Boilers (subject to state regulations)[JP21]	PM	15% opacity	Conduct _______-opacity monitoring of the stacks of all boilers.	Records of the fuel used in all the boilers.	
Engines (subject to state regulations)	PM	40% opacity – for any period greater than 10 seconds	Conduct periodic opacity monitoring on a ____ basis.	Maintain records of the lower heating value of the fuel.	Report all 6-minute periods which the opacity exceeded 15%.
	SO_2	1.0 lb/MMBtu		Record the daily sulfur content of the fuel used in the engines.	Report to the Director any dailu period which the sulfur content exceeds 0.8%.
Fugitive Dust	PM	40% Opacity	A Method 9 observer is required to conduct a	Record of the dates and types of dust control measures employed, and if applicable, the results of	

Emission Unit	**Pollutant**	**Emission Limit**[JP19]	**Monitoring Requirements**[JP20]	**Recordkeeping Requirements**	**Reporting Requirements**
			monthly[JP22] survey of visible emissions.	any Method 9 observations, and any corrective action taken to lower the opacity of any excess emissions.	
Abrasive Blasting	PM	20% Opacity		Record the date, duration and pollution control measures of any abrasive blasting project.	
Spray Painting	VOC	20% Opacity Control 96% of the overspray		Maintain records of the date, duration, quantity of paint used, any applicable MSDS, and pollution control measures of any spray painting project.	
Demolition/ Renovation	Asbestos			Maintain records of all asbestos related demolition or renovation projects including the "NESHAP Notification for Renovation and Demolition Activities" form and all supporting documents	

XII. COMPLIANCE ASSURANCE MONITORING (CAM)[JP23]

The CAM rule applies to pollutant-specific emission units (PSEU) at a major Title V source if the unit meets all of the following criteria:

A. The unit is subject to an emission limit or standard for the applicable regulated air pollutant;

B. The unit uses a control device to achieve compliance with the emission limit or standard; and

C. The unit has "potential pre-control device emissions" of the applicable regulated air pollutant equal to or greater than 100% of the amount (tons/year) required for a source to be classified as a major source. "Potential pre-control device emissions" means potential to emit (PTE, as defined in Title V) except emissions reductions achieved by the applicable control device are not taken into account.

The general purpose of monitoring required by the CAM rule is to assure compliance with emission standards by ensuring that control devices meet and maintain the assumed control efficiencies. Compliance is ensured through requiring monitoring of the operation and maintenance of the control equipment and, if applicable, operating conditions of the pollutant-specific emissions unit. For the PSEUs that have post control potential to emit equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, for each parameter monitored, the owner shall collect four or more data values equally spaced over each hour. Such units are defined as “large” PSEUs. For all other PSEUs (“small” PSEUs), the monitoring shall include some data collection at least once per 24-hour period. In the specific case of FMMI, all the PSEUs have post control emission below the major source threshold and therefore require data collection once in 24-hour period. Table 5 provides a list of small PSEUs at FMMI.

Table 7: CAM Applicable Units

S. No.	Equipment	Process #	Control Device
1	Secondary Screening Plant FFDC 1	017-280	FFDC
2	Secondary Screening Plant FFDC 2	017-281	FFDC

B. Monitoring Approach

FMMI uses FFDC as the control devices for controlling the emissions of particulate matter (both PM and PM_{10}). The monitoring approach for these devices is detailed below.

Table 8: Monitoring Approach for FFDC

Indicator	Visible Emissions
Indicator Range	No visible emissions.

Indicator	Visible Emissions
Measurement approach	Visible emissions from the control device exhaust will be monitored daily using a 1-minute visible emissions survey (i.e., EPA Reference Method 22-like procedures).
QA/QC practices and criteria	Operate and maintain the control device in a manner consistent with good air pollution control practice.
Excursion Range	Any opacity observed during the 1-minute visible emissions survey (i.e., EPA Reference Method 22-like procedure).

XIII. ENVIRONMENTAL JUSTICE ANALYSIS[JP24]

EJ analysis for permitting is meant to ensure the public has ample opportunity to provide comment during the public notice period and that the permit is protective of human health.

Guidance will be provided at a later date.

XIV. AMBIENT AIR IMPACT ANALYSIS

If any – TBD on how we will incorporate modeling for previous permitting actions.

XV. LIST OF ABBREVIATIONS[JP25]

A.A.C. .... Arizona Administrative Code
ADEQ .... Arizona Department of Environmental Quality
AERMOD .... AMS/EPA Regulatory Model
AERMET .... AERMOD Meteorological Preprocessor
AMS .... American Meteorological Society
AQD .... Air Quality Division
AQRV .... Air Quality Related Values
ARM .... Ambient Ratio Method
A.R.S. .... Arizona Revised Statutes
BACT .... Best Available Control Technology
Btu/ft^3 .... British Thermal Units per Cubic Foot
CAM .... Compliance Assurance Monitoring
CEMS .... Continuous Emissions Monitoring System
CFR .... Code of Federal Regulations
CH_4 .... Methane
CO .... Carbon Monoxide
CO_2 .... Carbon Dioxide
CO_2e .... CO_2 equivalent basis
EPA .... Environmental Protection Agency
FERC .... Federal Energy Regulatory Commission
FLM .... Federal Land Manager
°F .... degrees Fahrenheit

ft .... Feet
g .... Gram
GHG .... Greenhouse Gases
HAP .... Hazardous Air Pollutant
HHV .... Higher Heating Value
hp .... Horsepower
hr .... Hour
IC .... Internal Combustion
kW .... Kilowatt
MW .... Megawatts
NAAQS .... National Ambient Air Quality Standard
NO_X .... Nitrogen Oxides
NO_2 .... Nitrogen Dioxide
N_2O .... Nitrous Oxide
NSPS .... New Source Performance Standards
O_3 .... Ozone
Pb .... Lead
PM .... Particulate Matter
PM10 .... Particulate Matter less than 10 μm nominal aerodynamic diameter
PM2.5 .... Particulate Matter less than 2.5 μm nominal aerodynamic diameter
PSD .... Prevention of Significant Deterioration
psia .... Pounds per square Inch (absolute)
PTE .... Potential to Emit
sec .... Seconds
SF_6 .... Sulfur Hexafluoride
SIA .... Significant Impact Area
SIL .... Significant Impact Level
SO_2 .... Sulfur Dioxide Significant Impact Levels
TPY .... Tons per Year
VOC .... Volatile Organic Compound
yr .... Year

Attachment C

PUBLIC NOTICE

PUBLIC NOTICE

YOU HAVE A VOICE IN AIR POLLUTION CONTROL IN ARIZONA

The Arizona Department of Environmental Quality (ADEQ) proposes to issue Air Quality Control [Renewal?] Permit Number «Permit_Number» to «Name_of_Permittee» for [the continued operation? / installation?] of a [description of facility] facility located at «Location_or_Address_of_Equipment», «City_County_State_Zip_of_Equipment». The mailing address for the facility is «Address_of_Permittee», «City_State_Zip_of_Permittee». The facility is subject to the requirements of the Federal Clean Air Act, Code of Federal Regulations, Arizona Revised Statute 49-426, and the Arizona Administrative Code, Title 18, Chapter 2. The facility emits the following air contaminants:

This public notice provides information to help you participate in the decision-making process. You have an opportunity to submit written comments on this permit and request that ADEQ hold a public hearing on the permit. The written comment shall include the name, mailing address, signature of commenter and/or their agent or attorney and shall clearly set forth reasons why the permit should or should not be issued. Grounds for comment are limited to whether the permit meets the criteria for issuance spelled out in the state air pollution control laws or rules. The public notice period is in effect from «Beginning_Date_of_Public_Notice» to «M_30_Days_after_First_Publication». Comments may be submitted in writing to: Balaji Vaidyanathan, Facilities Emissions Control Section, ADEQ, 1110 West Washington Street, 3415A-1, Phoenix, AZ 85007 or via e-mail airpermits@azdeq.gov. Comments must be received by «M_30_Days_after_First_Publication».

The draft permit and related documentation are available for review Monday through Friday between 8:30 a.m. and 4:30 p.m., at the ADEQ Records Center, at 1110 West Washington Street, Phoenix, Arizona. Please call (602) 771-4380 or email recordscenter@azdeq.gov 48 hours in advance to schedule an appointment to review the file. The documents are also available at «Location_of_Reading_Material» at «Address_of_City_Clerk» in «City_State_Zip_of_City_Clerk». The draft permit and technical support document may be viewed online at www.azdeq.gov by accessing the Public Notices at the bottom of the webpage and searching for the date of this public notice.

ADEQ will consider all comments received in making a final decision on the proposed permit. Everyone commenting will receive notification of the final decision. People who file comments on the permit will have the right to appeal the final decision as an appealable agency action to the Office of Administrative Hearing (OAH) pursuant to §41.1092.03, and the appeal must be filed within thirty (30) days after the issuance of the final decision. The OAH may sustain, modify, or reverse the final decision.

This permit is subject to review by the Environmental Protection Agency (EPA) pursuant to 40 CFR 70.8 and Arizona Administrative Code R18-2-307. If EPA does not object to the issuance of this permit, you may petition to EPA within sixty (60) days after the expiration of EPA's forty five (45)-day review period. A petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. Please refer to https://www.epa.gov/title-v-operating-permits/title-v-petitions for additional information. Any person who petitions to EPA pursuant to 40 CFR 70.8(d) shall notify ADEQ by certified mail as soon as possible, but in no case more than 10 days following such petition. The notification shall include the grounds for objection and whether such objections were raised during the public comment period.

PUBLIC NOTICE

ADEQ will take reasonable measures to provide access to department services to individuals with limited ability to speak, write or understand English and/or to those with disabilities. Requests for language interpretation, ASL interpretation, CART captioning services or disability accommodations must be made at least 48 hours in advance by contacting Ian Bingham, Title VI Nondiscrimination Coordinator at 602-771-4322 or bingham.ian@azdeq.gov. Teleprinter services are available by calling 7-1-1 at least 48 hours in advance to make necessary arrangements.

ADEQ tomará las medidas razonables para proveer acceso a los servicios del departamento a personas con capacidad limitada para hablar, escribir o entender inglés y / o para personas con discapacidades. Las solicitudes de servicios de interpretación de idiomas, interpretación ASL, subtitulados de CART, o adaptaciones por discapacidad deben realizarse con al menos 48 horas de anticipación contactando a Ian Bingham, Coordinador de Anti-Discriminación del Título VI al 602-771-4322 o bingham.ian@azdeq.gov. Los servicios de teleimpresores están disponibles llamando al 7-1-1 con al menos 48 horas de anticipación para hacer los arreglos necesarios.

Attachment D

Air Quality Division NOV Assessment Matrix

Violation Condition: Increasing risk to human health or the environment

Violation Condition	NOC recommended	Discretionary	NOV recommended
Unpermitted release of contaminants into the environment: *HAZARDOUS AIR POLLUTANT*	Any volume of Any duration * A few specific pollutants in Small volume of Short duration may constitute an NOC; discuss with management		
US EPA High Priority Violations (HPVs)	Violations established as high priority by the US EPA HPV Policy must be considered; discuss with management (*See back for HPV Criteria)*		
Unpermitted release of contaminants into the environment: *NON-HAZARDOUS AIR POLLUTANT*	Low volume of Short duration	Low volume of Long duration High volume of Short duration	High volume of Long duration
Unpermitted release of contaminants into the environment: *FAILURE TO OBTAIN A PERMIT*	Failure to submit general permit renewal *Compliance Order possible	Failure to submit general permit	Failure to submit class I or class II individual permit or permit renewal * For renewals, engage in a Consent Order if the facility is cooperative
Failure to act as required by permit or law: Missing monitoring, reporting, CEMS data	Days of missing data	Weeks of missing data	Months of missing data
Failure to act as required by permit or law: Improper operation of the facility which could have a potential emissions impact, includes maintenance, hours of operation, and throughput limitation violations	Days of noncompliance	Weeks of noncompliance	Months of noncompliance
Recalcitrance / History of non-compliance	Upon reinspection, repeat violations within 12-24 months	Upon reinspection, repeat violations within 6-12 months	Upon reinspection, repeat violations within 6 months
Failure to act as required by permit or law: Multiple violations within the program which would not likely impact emissions, includes paperwork violations	< 10 violations (none corrected onsite)	10-15 violations (none corrected onsite)	> 15 violations (none corrected onsite)

Violation Severity: Increasing deviation from the regulation, rule, or permit condition

Legend
NOC recommended
Discretionary: Requires consultation with Section Manager
NOV recommended

Note: This matrix is designed to be used as a tool and not intended as a strict protocol; it is intended to facilitate decisions about when to issue an NOC versus an NOV. No tool or guidance can supplant good judgement; when in doubt consult with upper management.

(Last Revised: Draft 5/12/20)

HPV Criteria: (Circle applicable criteria)

Did the violation occur at a major source?, or
Is the violation related to a pollutant for which the source is considered major?, or
Did the violation affect a minor source status at a synthetic minor source?
If yes to any of these and if the violation fits any of the following 6 General Criterias (GC), then it is an HPV.

GC1: Failure to obtain PSD or NA NSR Permit

GC2: Violation of a federally enforceable PSD or NA NSR emission limit, emission standard or operating parameter and surrogate for emissions, for at least 7 days.

GC3: Violation of an NSPS emission limit, emission standard or operating parameter and surrogate for emissions, for at least 7 days.

GC4: Violation of a NESHAP emission limit, emission standard or operating parameter and surrogate for emissions, for at least 7 days.

GC5: Violation of a federally enforceable work practice, testing requirement, monitoring requirement, recordkeeping or reporting that substantially interferes with a determination of the source's compliance.

GC6: Any other violation that warrants designation as an HPV.

See EPA's "Enforcement Response Policy for High Priority Violations of the Clean Air Act: Timely and Appropriate Enforcement Response to High Priority Violations- 2014" for further details.

Data requirements for HPVs: Day Zero, pollutant, CAA program, and Discovery Action.

Appendix I. The EPA Response to the ADEQ Comments

EPA Region 9 Responses to the ADEQ Comments on the Draft Title V Program Evaluation Report December 2, 2020

Responses to Comments

Thank you for providing comments on the draft title V program evaluation report.[1] Below, we summarize each comment from the ADEQ's October 19, 2020 letter and provide our response. Additionally, the ADEQ provided a "marked up" version of the draft report with additional minor clarifications. We separately address those additional clarifications further below. Note: use of the word "we" refers to the EPA.

1. Findings 2.2, 2.3, 3.1, 5.2 - Technical Support Document (TSD): Templates and Approach

   ADEQ Comment: In response to Finding 2.2 where we recommended the ADEQ to develop a process for updating the templates and notifying staff when templates are updated, the ADEQ provided additional details on a newly developed tool to generate folders and templates automatically once a permit application is received. The templates are pulled from a centralized location in which new templates are saved and older templates are archived. This process ensures that the correct and most up to date templates are in use.

   EPA Response: We added this clarifying information into Finding 2.2 in the final report.

   ADEQ Comment: In Finding 2.2, we also recommended that the minor and significant revision actions should explain why a standard section of the TSD was not applicable for a given action instead of omitting the section. The ADEQ stated that the sections that are removed from the TSD template in certain instances are not due to those sections being unnecessary but rather those sections are not applicable and could potentially generate confusion. For example, if they process a minor revision that does not trigger modeling or RACT, it is noted in the body of the TSD. It would be confusing or duplicative if an entire section is added with the language duplicated or to recycle information from a previous action that does not apply to the revision.

   EPA Response: We would like to clarify that our intent is not to have duplicated information that does not apply to the action. Our review of permit actions included some actions for which sections of the TSD were omitted entirely instead of including a statement explaining that the action did not trigger the particular requirement. The EPA agrees with the ADEQ's stated approach of noting in the body of the TSD why a particular requirement is not triggered. We clarified this portion of Finding 2.2 to reference the "historic" TSD template.

   ADEQ Comment: The ADEQ also added that in April 2020, the Air Permits Unit held a TSD mapping meeting to identify gaps and opportunities that had historically resulted in rework and lack of clarity. The mapping meeting and the research that was completed resulted in a comprehensive TSD template that includes more elements such as the reasoning for voluntarily-accepted conditions or material permit conditions (Finding 2.3, 5.2), a more robust NSR applicability section

[1] The Department's comments, along with EPA's responses to comments, are included as Appendix H and I, respectively, in the final report.

(Finding 2.2), a specific section for a Compliance Assurance Monitoring (CAM) discussion (Finding 3.1), and more discussion regarding compliance cases and performance testing results. The new TSD template was completed as of June 2020 and is included in Attachment B.

EPA Response: We added these improvements into Findings 2.2, 2.3, 3.1, and 5.2.

2. Finding 4.1 - Final Permits on Website

   ADEQ Comment: In Finding 4.1, the EPA recommended posting final permits on the Department website for easier public access. The ADEQ stated that they became aware of a Department-wide effort to create an online permits database. It is still in its preliminary stages and is being driven at the Department level.

   EPA Response: The EPA encourages the ADEQ to continue to support this effort. We revised our recommendation for Finding 5.1 to acknowledge this effort.

3. Finding 4.2 - Public's Right to Petition

   ADEQ Comment: In Finding 4.2, the EPA recommended that the ADEQ revise its public notice templates to inform the public of the right to petition the EPA Administrator to object to the issuance of a title V permit. Following the EPA's visit to the ADEQ, the EPA provided ADEQ sample language to address the public's right to petition to the EPA. The ADEQ worked internally with their communications team to include the language in the template for public notices that includes a link to EPA's "Title V Petitions" website. This was completed and has been in place since April 2020. A copy of the new public notice template can be found in Appendix H.

   EPA Response: The EPA commends the ADEQ's efforts to address this recommendation. We added this new information to Finding 4.2.

4. Finding 5.1/7.8 - Permit Issuance and Process

   ADEQ Comment: In Findings 5.1 and 7.8, the EPA raised some concern about the ADEQ's aggressive internal deadlines and balancing between timelines and work quality. The ADEQ responded that last year, the Air Permits Unit used Arizona Management System principles to evaluate the minor permit revision process for minor sources and determined that the touch time for reviewing the application and drafting the permit (10 days) should match the time frame for major sources (20 days) because the approach for minor NSR applicability was not substantially different. Management was supportive of adjusting the time frame upwards from 10 to 20 days.

   EPA Response: The EPA commends the ADEQ for reevaluating its existing processes to promote continuous improvements. We added this new information to Findings 5.1 and 7.8.

   ADEQ Comment: The ADEQ also recommended that the EPA replace the word "deadlines" with "goals" to more accurately reflect the Department's approach with permit timelines.

EPA Response: This change is reflected in the final report.

5. Finding 6.4 – Notice of Violation (NOV)/ Notice of Opportunity to Correct Deficiencies (NOC) Risk Matrix and ADEQ's Compliance Approach

   ADEQ Comment: For Finding 6.4, the EPA recommended the ADEQ continue to follow the EPA's guidance on high priority violations, but we also recommended the Department evaluate whether its overall approach to compliance and enforcement ensures NOVs are not handled arbitrarily. The ADEQ disagrees with the overall characterization of the effectiveness of the ADEQ air compliance program. The ADEQ stated that while the air compliance program lacks administrative penalty authority, the Department has taken penalty actions, through the Attorney General's office, to address egregious violations or recalcitrant non-compliance behavior.

   EPA Response: The EPA acknowledges that the ADEQ does take penalty action through the Attorney General's office to address egregious violations. However, the NOV/NOC decision matrix seemingly allows for multiple minor violations that may falsely signal that the sources are allowed certain allowances before a violation is triggered. This finding and recommendation remain as drafted.

6. Finding 7.2 and 7.3 - Revenues and Expenditures

   ADEQ Comment: For Finding 7.2 and 7.3, the EPA stated that the ADEQ must be able to identify and distinguish title V funds from non-title V funding in the Air Permits Administration Fund (APAF) and should complete these efforts, per their commitment, as quickly as possible to assure appropriate tracking of title V funds. The ADEQ has committed to accurately track title V revenues and expenditures to ensure the title V program is effectively funded and implemented from the APAF going forward.

   Previously, only permit writing time was actively tracked because it is a billable activity. At this time, other aspects of work in the Value Stream like report reviews, inspections, and formal and informal enforcement work are also precisely tracked. Doing this helps ensure that staff labor expenditures are suitably compensated by the appropriate revenue stream. The above-mentioned enhancements were put in place in June 2020. The ADEQ shared these concepts with EPA personnel as a proposed remedy for the EPA's findings. As requested in the EPA findings, the Department will report information from the Title V revenues and expenditures tracking system each year for the next 5 years to address the overall substance of the EPA's concerns.

   EPA Response: The EPA appreciates the ADEQ's efforts in addressing these issues and the EPA will continue to work with the ADEQ in tracking the recommendations via a workplan and analytical review as noted in the report. This finding and recommendation remain as drafted.

7. Finding 7.6 - Environmental Justice (EJ) Awareness

ADEQ Comment: For Finding 7.6, the EPA recommended that the ADEQ find ways to increase internal awareness among its permitting and compliance staff regarding the EJ program and how their work is tied to its success. In response, the Air Permits Unit added an Environmental Justice section into its TSD template during the recent comprehensive update for any new stationary source applying for a permit. The ADEQ has used the EPA Screening Tool in its evaluations and is working with the EPA to develop a robust process for the team to communicate with EJ communities on air quality permits and compliance issues.

EPA Response: The EPA commends the ADEQ's effort in including EJ in its permit review. We revised our recommendation for Finding 7.6 to include this information.

Additional Clarifications

1. Quality Assurance Process for Reviewing Permits

   ADEQ: "The Draft Evaluation states, "Compliance Unit is no longer involved in the permit review process before permit issuance; they receive a copy during the public comment period. This makes it more challenging for enforcement to provide or incorporate feedback that would result in a permit change because the permit is already out for public review"; and

   "However, as stated in Finding 2.1, the Compliance Unit's ability to make corrections to a permit may be hampered if their review of a draft permit is conducted after the permit is public noticed."

   The Air Compliance Unit (ACU) has multiple opportunities to participate in the permit process prior to public notice. As a result of the weekly Value Stream stand-up meetings, the compliance unit is made aware of all permits being processed and any potential issues or complexities related to the facility (noted in 6.2). For questions with testing or prior cases, permit engineers reach out to their inspection and compliance counterparts for guidance or additional context. It must be noted that the ACU has an opportunity to provide comments during the public notice period in their thorough review of the permit and Inspection Checklist."

   EPA: The EPA acknowledges that there is very good communication between the Air Compliance Unit and the Air Permits Unit. We would like to clarify that there is a general sentiment from staff interviews that the Air Compliance Unit is not offered the opportunity to officially review the permit until public notice, and some staff members feel constrained from providing feedback because the documents are already in the public domain. Some clarifications are added to Findings 2.1 and 6.2.

2. Backlog/Permits Issued in Timely Manner

   ADEQ: "The Draft Evaluation states, "The ADEQ does not issue a final permit until the facility pays the permit fee, which can delay the overall permit issuance timeline."

“ADEQ would request that clarification be made here regarding the difference between permit issuance and granting the permit. The internal and regulatory timeframes are compared against the final "days to decision" where the decision has been made to finalize the permit. This is the "Grant" date. The issuance date occurs after fees are paid but have no impact on any timeframes. In other words, the clock stops at "Grant." Since that is the case, there is a possibility that the finding that “staff mentioned the most significant obstacle is waiting for facilities to pay fees” may have either 1) been interpreted incorrectly and the staff meant that is the longest elapsed time period (“wait time”) that they experience during the process or 2) they were referring to a recent (at the time of the evaluation) non-title V permit which was contentious and in which the Permittee did not pay fees in the expected time frame.”

EPA: The EPA clarifies that our understanding was that staff were referring to the “wait time” associated with the time from granting a permit decision to issuing it. Finding 5.1 has been clarified with an additional footnote explaining this nuance.

3. Re: Synthetic Minor Permits

ADEQ: “The Draft Evaluation states, “Furthermore, the permits contain no conditions specific to the pollutant which is subject to a synthetic minor limit.” Footnote No. 49

“Footnote No. 49: “Permit No.74605, states the facility has a synthetic minor limit for PM_{10}. However, the permit does not contain any PM10-specific emission limits, monitoring, recordkeeping, or reporting requirements.”

“ADEQ would like to provide clarification on a perceived misinterpretation of the permit language in Permit No. 74605. The permit does not explicitly state that there is a synthetic minor limit for PM_{10}. The permit states that “emissions are controlled below the major source threshold and correspondingly, the permit has requirements that controls need to be operated.” In response to the voluntary use of air pollution control devices, ADEQ imposed permit conditions to ensure control equipment is operated in a manner consistent with good air pollution practices.”

EPA: The EPA clarified footnote 49 to be more consistent with the language in the referenced permit.

4. Process to Escalate Potential Issues

ADEQ: “The Draft Evaluation states, “The Department’s staff report that supervisors and management are available for one-on-one consultation on title V permitting issues. Regular daily and weekly three-hour group meeting discussions are held with staff, supervisors and management to resolve any potential issues. However, staff also indicated that it can be hard to find available time to meet with managers one-on-one due to their busy schedules. Some issues are not going to be relevant to the entire unit if those issues are brought up during group unit meetings and extend the unit meeting longer than desired.”

“It is important to note that not only are managers available for one-on-one consultations, but all managers are required to hold a structured 1:1 with their staff members bi-weekly. If an absence occurs, the 1:1s are rescheduled so the opportunity is not missed. Staff have also scheduled longer 1:1s or meetings adjacent to 1:1s in order to discuss permitting items. In regard to the value stream meeting being longer than desired, ADEQ believes that the discussions that occur at the weekly value stream meetings are relevant to all team members as it provides them broader context on how their work ties in with the strategic direction of the value stream.”

EPA: The final report includes these additional clarifications in Finding 7.4.