

Bay Area Air Quality Management District

MANUAL OF PROCEDURES

VOLUME II

ENGINEERING PERMITTING PROCEDURES

PART 3

MAJOR FACILITY REVIEW PERMIT REQUIREMENTS

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PART 3
MAJOR FACILITY REVIEW PERMIT REQUIREMENTS

(Adopted November 3, 1993)

(Amended September 16, 1998; October 20, 1999, May 2, 2001)

REF: BAAQMD Regulation 2, Rule 6
BAAQMD Regulation 1
BAAQMD Regulation 2, Rule 1

1. INTRODUCTION

On November 15, 1990, Congress passed the Clean Air Act (Act) Amendments. These amendments initiated several important programs, including one for federally enforceable operating permits. The operating permit program was incorporated into Title V of the Act. The United States Environmental Protection Agency (EPA) promulgated regulations in the Code of Federal Regulations (40 CFR Part 70) to implement Title V. The Major Facility Review (MFR) program as implemented by Regulation 2, Rule 6, and this chapter of the Manual of Procedures is the District's response to the EPA regulations.

The District's rule and the Manual of Procedures were adopted on November 3, 1993. They were submitted to EPA for approval on November 15, 1993. EPA granted interim approval to the District's program on July 24, 1995. This is the effective date of the program in the Bay Area.

The BAAQMD requires a federally enforceable operating permit for each major facility, major hazardous air pollutant facility, phase II acid rain facility, subject solid waste incinerator facility, and designated facility. This permit is called a "Major Facility Review Permit" and is issued in addition to any "Authority to Construct" and "Permit to Operate" required by Regulation 2-1.

The District also allows a facility that is defined as major, but which is not otherwise required to have a major facility review permit, to apply for and receive a revision to its permit to operate that would limit the facility's potential to emit such that the facility is no longer a major facility, but a synthetic minor facility. The facility's permit then becomes a synthetic minor permit.

A major facility is a facility with the "potential to emit" more than 100 tons per year of any regulated air pollutant, 10 tons per year of any single hazardous air pollutant (HAP) on the

EPA's list of 188 pollutants (listed in Section 112(b) of the Clean Air Act), 25 tons per year of any combination of HAPs, or a lesser quantity of a HAP as the EPA administrator may establish by rule.

"Potential to emit" is defined as the maximum capacity of a facility to emit a pollutant based on its physical and operational design. If the facility has enforceable limitations on emissions, the facility is considered to have a lower potential to emit. The limitation may be federally or locally enforceable. A federally enforceable limitation means that the limit has been imposed as a result of review under a federally mandated program such as NSR, PSD, NSPS, NESHAPs, or MFR. A permit condition that limits emissions pursuant to a rule or regulation that has been approved by the EPA for inclusion in the State Implementation Plan (SIP) is also federally enforceable. A District or state requirement that has not been approved for inclusion in the SIP by EPA is not federally enforceable but can limit potential to emit for the purposes of major facility review.

Fugitive emissions (those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening) of regulated air pollutants are not included in the potential to emit unless the facility belongs to one of the following categories:

1. Coal cleaning plants (with thermal dryers)
2. Kraft pulp mills
3. Portland cement plants
4. Primary zinc smelters
5. Iron and steel mills
6. Primary aluminum ore reduction plants
7. Primary copper smelters
8. Municipal incinerators capable of charging more than 250 tons of refuse per day
9. Hydrofluoric, sulfuric, or nitric acid plants
10. Petroleum refineries
11. Lime plants
12. Phosphate rock processing plants
13. Coke oven batteries
14. Sulfur recovery plants
15. Carbon black plants (furnace process)
16. Primary lead smelters
17. Fuel conversion plants
18. Sintering plants
19. Secondary metal production plants
20. Chemical process plants
21. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels

23. Taconite ore processing plants
24. Glass fiber processing plants
25. Charcoal production plants
26. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input
27. Any other stationary source category which is regulated under Section 111 or 112 of the Clean Air Act, but only with respect to those air pollutants that have been regulated for that category

Fugitive emissions of all hazardous air pollutants are included in the total potential to emit.

The District's emission inventory contains actual emissions rather than a calculation of "potential to emit." Since the potential to emit for all facilities is not known, the District based the program on actual emissions for the first four years. Major facilities were only required to apply for major facility review or synthetic minor permits or demonstrate that their potential to emit was below all major facility review thresholds if they had *actual* emissions equal to or greater than the following thresholds for any consecutive 12 month period ending on or after January 1, 1992:

- 50 tons per year of any regulated air pollutant,
- 70% of the major facility threshold for any hazardous air pollutant, or
- 15 tons per year of any combination of hazardous air pollutants.

The four year deferral period was not extended to any facility with permit conditions that explicitly limited emissions to a level equal to or greater than 100 tons per year of a regulated air pollutant or 10 tons per year of a hazardous air pollutant. Such a plant had to apply for a major facility review or synthetic minor permit during the initial period. Also, any facility in a category specifically designated by EPA as needing a Title V permit could not be deferred.

This revision of the rule and MOP does not contain a deferral. Facilities with actual emissions above 25% of the major facility thresholds must show that their potential to emit is below the thresholds or apply for a synthetic minor or major facility review permit. The District will determine the status of facilities with actual emissions lower than 25% of the thresholds.

This section of the Engineering Permitting Procedures provides the information an applicant will need to prepare and submit to the District an application for a major facility review permit or a synthetic minor permit. It includes an overview of the types of situations that would require an application, as well as guidelines for determining what type of permit is needed. Sections describing each permit type will contain, as applicable, completeness criteria, permit content, the timeline for issuing the permit, and the permit term. Information is also provided on fees, trade secrets, public notice procedures, EPA review, and appeals.

Major facility review permits are designed to include in one document all the requirements for each source of emissions at a facility. These permits will be made available to EPA and the public prior to issuance, when they are renewed (every five years), and when there is a significant revision to a federally enforceable term or condition. The District will indicate on each major facility review permit those terms and conditions that are not federally enforceable.

The process of writing a major facility review permit requires an evaluation of emissions and emission factors sufficient to determine applicable requirements and fees; a determination of what District, state and federal regulations apply to each source; an analysis of existing permit conditions; a compilation of all required test methods and procedures applicable to each source; an analysis of the SIP rules that apply to each source; and the imposition of monitoring, recordkeeping, and reporting conditions to ensure compliance with applicable regulations. Additionally, all conditions in a major facility review permit must be specified as being either federally enforceable or enforceable only by the District. This is because some District rules and regulations have been imposed by state or District mandate and not due to a federal statute or regulation. Permit conditions resulting only from state or District mandated regulatory provisions are not federally enforceable and must be so noted in the permit.

Synthetic minor permits require some of the same elements as major facility review permits, such as the evaluation of emissions and the verification of emission factors. However, synthetic minor operating permits differ fundamentally from major facility review permits in some important respects. The first is that all synthetic minor operating permits will have practically enforceable permit conditions to limit the potential (permitted) emission levels to below the thresholds for major facilities. The second is that synthetic minor operating permits are not required to list all the applicable requirements in the detail required for major facility review permits. Prior to issuing a synthetic minor operating permit, the facility and the District will need to determine whether the facility falls into any other category that might require a Title V permit.

The California Environmental Quality Act (CEQA) requires a government agency, such as the BAAQMD, that undertakes or approves a discretionary project to prepare documentation addressing the potential impacts of that project on all environmental media. However, the District's Major Facility Review Rule (Regulation 2-6) and the Manual of Procedures, Volume II, Part 3 are categorically exempt from the requirements of the California Environmental Quality Act as stated in the CEQA Guidelines Section 15281: "CEQA does not apply to the issuance, modification, amendment, or renewal of any permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to an air district Title V program established under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility."

2. APPLICATIONS

A facility subject to the requirements of Regulation 2, Rule 6, Major Facility Review, must initially determine whether it will apply for a major facility review permit, a synthetic minor permit, or demonstrate that its potential to emit is below the major facility thresholds. If an application is required, the application process should follow the timeliness and completeness provisions specified below. All applications should be signed by the facility's responsible official and mailed to the District's Permit Services Division.

2.1 Major Facility Review Permits

2.1.1 Timely Applications

Initial Applications

In general, an initial application for a major facility review permit must be submitted so that the District receives it within twelve months from the date the facility becomes subject to the permitting requirements of Regulation 2, Rule 6. A new facility becomes subject on the date that the facility commences operation.

An existing major facility with emissions equal to or greater than 50 tons per year of any regulated air pollutant, 70% of the major facility threshold for any single HAP, or 15 tons per year of any combination of HAPs became subject to the permitting requirements of Regulation 2, Rule 6 on the date of EPA's final action approving the District's Title V program ('program effective date'). This date was July 24, 1995.

An existing major facility with actual emissions below these levels must apply for a major facility review permit by October 20, 2000.

An initial application from an existing phase II acid rain facility that was not also a major facility was subject to the same deadlines applicable to major facilities. Submittal of the acid rain portion of the applications was required by January 1, 1996.

In a departure from the general timeliness requirement, an initial application from an *existing facility with fewer than 50 permitted sources* was required by the District by October 24, 1995.

Applications for Renewals

An application for a five-year permit renewal should be received by the District between six and twelve months prior to the date on which the permit is set to expire.

Applications for Revisions

A facility must apply for a significant permit revision before commencing operation of the change. If the permit prohibits the change, the facility must obtain the significant permit revisions before commencing operation of the change.

An application for a minor permit revision should be received by the District prior to commencing any physical, operational, and/or administrative change associated with the minor permit revision. The District will determine whether the revision qualifies as a minor revision during the 30-day completeness determination period.

These requirements do not relieve the applicant of the requirement to obtain an authority to construct or permit to operate pursuant to Rules 2-1 or 2-2.

An application for an administrative permit amendment may be submitted at the same time the change is implemented.

2.1.2 Complete Applications

Any application, report, or compliance certification submitted for major facility review shall contain a certification of truth, accuracy, and completeness by a responsible official. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. All major facility review applications shall be sent to EPA by the applicant as well as to the District.

An initial or five year renewal application for a major facility review permit shall consist of BAAQMD application forms and attachments which contain all the following information in order to be considered complete:

- a. *Identifying information*, including company name and address (and plant name and address if different), plant number, owner(s) name, agent (if any), telephone number, and names of plant site manager or contact person.
- b. *A description of the facility's processes and products* (by Standard Industrial Classification Code) including any Codes associated with an alternate operating scenario identified by the facility.

- c. *Emission-related information* including but not limited to: (1) emissions (including fugitive emissions) of any regulated or hazardous air pollutant from each source and each activity which produces emissions if the emissions from each source or activity are equal to or greater than 2 tons per year of any single regulated air pollutant or 400 pounds per year of any single hazardous air pollutant. The emission rates shall be expressed in tons per year and also in such units as are required by any applicable standard reference test method; (2) identification and description of all permitted, exempt, and excluded sources of emissions (3) identification of any applicable air quality-related District, state, and/or federal Clean Air Act requirements, and test methods that apply to each permitted, exempt, or excluded source or emissions-producing activity included in (1) and (2) above; (4) emission rates (a) for each source or emissions-producing activity included in (1) above in tons per year; and (b) in such units as are required by any applicable standard reference test method; (5) emission rates resulting from any alternate operating scenarios; (6) fuel(s), fuel use, raw material(s), production rate(s), and operating schedule(s) for each source or activity, as needed, in order to determine or regulate emissions; (7) identification and description of any air pollution control equipment and compliance monitoring devices or activities; (8) limitations on the facility's operations affecting emissions; (9) any work practice standard for any regulated air pollutant; (10) the calculations on which all emissions information are based; and (11) any other information required by an applicable regulation or test method.

Emission summaries and calculations for pollutants emitted in quantities below the thresholds listed in c(1) above are not required for sources and activities that have emissions of other pollutants at or above these thresholds.

[The requirement to include emission calculations for a source may be satisfied by the submission of emission inventory calculations provided by the District, based on throughput data from the most recent annual renewal and calculated using APCO approved emission factors. If accurate emission inventory calculations for a source are not available from the District, the facility must provide the calculations and explain any assumptions regarding emission factors and abatement factors. For identical sources, facilities may submit one sample calculation together with the throughput for each source. Calculations submitted in a spreadsheet format are acceptable. The emission calculations included in the permit application (whether those supplied by the District

or calculated independently by the facility) must be certified by the responsible official as complete, accurate, and true.]

- d. Other *information necessary* to implement and enforce other applicable requirements or determine the applicability of any such requirement on any source (whether permitted, exempt, or excluded) or any other activity.
- e. An explanation of any proposed *exemption* from otherwise applicable requirements.
- f. Any additional *information necessary* to define alternate operating scenarios.
- g. A *compliance plan* for the facility which contains: (1) a description of the compliance status of the facility with respect to all applicable requirements; (2) a compliance statement asserting that the facility is in compliance and will remain in compliance with existing requirements; that the facility will be in compliance with future requirements (if applicable); and/or if the facility is not currently in compliance, how it will achieve compliance with all requirements; (3) a schedule of compliance stating how a facility will achieve compliance in a timely manner with future requirements and/or requirements currently not being met (including a schedule of remedial measures with an enforceable sequence of milestones which must resemble and be as stringent as contained in any judicial consent decree or administrative order to which the facility is subject); and (4) for facilities required to have a schedule of compliance to remedy a violation, a schedule for submission of certified progress reports no less frequently than once every six months.

[The requirement for describing the compliance status of each permitted source may be fulfilled by checking the "Compliance: Y/N" column in the Applicable Requirements and Compliance Summary form. If a source is out of compliance, the facility must submit a complete Schedule of Compliance form for that source.]

The requirements for a compliance plan stated herein apply to phase II acid rain facilities except where specifically superseded by regulations promulgated for such facilities. (If necessary, the District will add a chapter to the Engineering Permitting Procedures to incorporate such requirements for Phase II Acid Rain Facilities.)

- h. Requirements for *compliance certification* as follows: (1) a certification of compliance with all applicable requirements by a responsible official; (2) a statement of the methods used to determine compliance, including a description of monitoring, recordkeeping and reporting requirements, and test methods; and (3) a schedule for submission of compliance certifications (at least annually, or more frequently as required by an underlying applicable requirement or by the District).
- i. If the facility is a Phase II acid rain facility, any *nationally standardized forms for acid rain* portions of permit applications and compliance plans as required under Title IV of the Clean Air Act.
- j. A *list of every source which is exempt or excluded* from District permitting requirements pursuant to Regulation 2, Rule 1 or Regulation 1 (including a specific reference to the section which provides each applicable exemption or exclusion).
- k. A statement certifying that all fees required by District Regulation 3 have been paid.

Most of the data described in sections 2.1.2(a) to 2.1.2(k) must be submitted to the District on the following Title V forms:

- Stationary Source Summary
- Total Stationary Source Emissions
- Detailed Emissions Report
- Exempt Source List
- Abatement Devices
- Applicable Requirements and Compliance Summary
- Certification Statement
- Compliance Certification Schedule

The Schedule of Compliance form may also be required if the facility is out of compliance. The Operating Scenarios form is required if the facility wishes to include alternate operating scenarios in the permit.

A complete application for a permit revision (significant or minor) or an administrative permit amendment must include each item listed above only if it is related to the proposed change. Also, the application must include: (1) a description of the change, any change in emissions, and any new applicable requirements that will apply if the change occurs; (2) draft language of all proposed modified portions of the permit; and (3) a completed permit application summary form, a summary of the proposed revision, and any proposed revision to the compliance plan for the District to forward to EPA. In

any event, the information submitted must be sufficient to evaluate the facility and its application in order to determine all applicable requirements. If the application is for a minor permit revision, it should also include certification from a responsible official that the proposed revision meets the criteria for use of minor revision procedures, a request that such procedures be used, and a draft permit including the proposed change.

2.2 Synthetic Minor Operating Permits

Synthetic minor operating permits must have practically enforceable limits and conditions that ensure that the facility never exceeds the thresholds for a major facility. The permit may also contain limits and conditions that have been established pursuant to other District rules and regulations but do not contribute to establishing the synthetic minor limits. These limits and conditions shall be designated by an asterisk.

Any change to a permit term or condition of a synthetic minor operating permit that (1) establishes a plantwide emission limit, (2) changes a limit necessary to keep the emissions below the synthetic minor thresholds, or (3) specifies the monitoring and recordkeeping requirements necessary to verify ongoing compliance is considered a synthetic minor operating permit revision.

Any change at a facility with a synthetic minor operating permit that would be considered a modification under Regulation 2, Rule 2, New Source Review, shall comply with all the requirements in Regulations 1 and 2 for authorities to construct and with the "Permits, General" section of the District's Manual of Procedures, Volume II, Part 2. Any emissions increase above any synthetic minor limit is therefore subject to Best Available Control Technology if the increase is above the thresholds in Regulation 2-2-301 and must supply offsets if the increase is above the thresholds in Regulation 2-2-302.

If an application for a revision to a synthetic minor operating permit would allow emissions to exceed the thresholds for a major facility, the facility must undergo preconstruction review in accordance with Regulation 2, Rule 2, petition the APCO for a cancellation of the synthetic minor permit, and apply for a major facility review permit in accordance with Regulation 2, Rule 6, prior to commencing the change.

2.2.1 Timely Applications

a. Initial Applications for Synthetic Minor Operating Permits

An existing major facility that chose to apply for a revision to a District operating permit to become a synthetic minor facility was required to file an initial application for a revision to its District operating permit by August 3, 1994. This timing was required in order to provide the District

with sufficient time to process the permit revision. Unless the permit revision was completed, the facility had to apply for a major facility review permit by July 24, 1996.

A facility that becomes subject to major facility review on October 20, 1999 shall have one year to: 1) apply for and obtain a synthetic minor permit; 2) demonstrate that the potential to emit is less than each major facility threshold; or 3) apply for a major facility review permit.

A facility that is not required to apply for a major facility review permit may at any time apply for a revision to its permit to operate to convert it to a synthetic minor operating permit.

b. Revisions to Synthetic Minor Operating Permits

An application for a synthetic minor operating permit revision may be submitted at any time. The facility may not commence any change proposed in the application until after the permit is modified.

2.2.2 Complete Applications

An application for a synthetic minor operating permit or for a synthetic minor operating permit revision must contain the following elements to be considered complete:

- a. District forms P-101C (Application Form), SMOP-ES (Permitted Sources and Maximum Emissions), SMOP-EF (Total Facility Emissions); SMOP-EX (List of Exempt Sources or Activities), and any other relevant District permit application forms (e.g. colored Data Forms for new sources, Data Form X for revised emission factor information);
- b. A statement certifying that any fees required by District Regulation 3 has been paid;
- c. Emission calculations showing the maximum annual and maximum monthly emissions from each source (singly or grouped) such that total emissions will be no greater than 95 tons per year of any regulated air pollutant, no greater than 9 tons per year of any single hazardous air pollutant, and no greater than 23 tons per year of any combination of hazardous air pollutants. If fugitive emissions count toward determining if the facility is a major facility (as defined in Section 2-6-212) they must be included in the emission calculations.

[If combined potential emissions from all exempt or miscellaneous activities that do not require a permit are equal to or greater than 2 tons per year of any regulated air pollutant or 1000 lbs per year of any hazardous air pollutant, the calculations must include emissions from these activities reflecting any restrictions to be imposed on them. Include these emissions in Form SMOP-ES and SMOP-EF.]

- d. Proposed permit conditions that include throughput limits, specifications of permitted materials, and any necessary restrictions on operations such that facilitywide emissions will be no greater than 95 tons per year of any regulated air pollutant, no greater than 9 tons per year of any single hazardous air pollutant, and no greater than 23 tons per year of any combination of hazardous air pollutants. However, in the case of surface coating operations, emission limits without throughput limits may be allowed, if the facility agrees to provide daily recordkeeping, daily or monthly emission calculations (depending on circumstantial details), and monthly year-to-date emission summaries.
- e. Proposed permit conditions imposing monitoring, recordkeeping and reporting requirements sufficient to determine ongoing compliance.

2.3 Potential to Emit Demonstrations

A facility with a potential to emit that is below the thresholds that define a major facility, may petition the District to determine that the facility is not a major facility. In this case, the facility will be responsible for demonstrating its true potential to emit to the District in a satisfactory manner. This demonstration must be completed before the deadline for applying for a major facility review permit.

The potential to emit is calculated using the following assumptions:

- Each source operates at maximum capacity for the maximum number of hours feasible for that source.
- The effect of permit conditions on emissions is considered if the conditions are enforceable.
- The effect of abatement devices on emissions is considered to the extent expressed in the requirement. For example, if the requirement is for 90% abatement, the emissions reduction can only be considered at 90%, although the real abatement efficiency may be higher.
- The effect on emissions of a District rule is considered.
- The effect on emissions of NSPS, NESHAPS, and other federal rules is considered in the potential to emit calculation.
- AP-42 emission factors may be used to calculate the potential to emit.
- Other emission factors may be used if approved by the APCO.

The maximum possible emissions are calculated using the above assumptions and summarized for the entire facility.

If the responsible official for a facility determines that the potential to emit of a facility is less than the thresholds in Section 2-6-212, said official may submit the calculations and petition the APCO to find that the facility is not a major facility. Should this demonstration be considered satisfactory by the APCO, the District will not require that the facility apply for a synthetic minor or major facility review permit. A copy of the potential to emit determination will then be approved by the District and placed in the District files for future reference. Any change to the facility after the potential to emit determination has been approved may change the status of the facility.

3. FEES

Major facilities, Phase II acid rain facilities, subject solid waste incinerator facilities, and designated facilities are subject to Title V. All of these facilities will pay the major facility review permit fees in Regulation 3, Schedule P, in addition to the annual renewal fees and any other fees that apply to the facility. The fees required by Schedule P are summarized below.

Any facility subject to the permitting requirements of Regulation 2, Rule 6 will pay a fee per permitted source per year and a fee per ton of emissions of any regulated air pollutant per year. The emissions will be based on the facility's most recent reported throughput and calculated using APCO approved emission factors. This charge is the annual major facility review fee.

Any facility that has a continuous emission monitor (CEM) or a parametric emission monitoring system (PEMS) shall pay an annual fee per monitor per pollutant. This fee does not apply to opacity monitors (COMS) or parameter monitors, such as instruments that solely measure temperature or pressure drop as a surrogate for emissions monitoring. Parametric monitoring systems are systems that measure a number of parameters and that use a model to determine emissions. They are used as an alternative to continuous emission monitors.

Any facility that applies for a permit shield shall pay an application fee per shielded source or group of identically shielded sources. Separate fees shall be charged for each type of permit shield: 1) for limits that do not apply, and 2) subsumed monitoring. The total applicable permit shield fees shall be determined by the permitting engineer during the major facility review process associated with the application.

An application for a synthetic minor operating permit must be accompanied by an application fee per permitted source up to a maximum fee.

A facility applying for a significant permit revision or a minor permit revision to its major facility review permit; or for a synthetic minor operating permit revision shall pay an application fee per source that is associated with the revision.

A facility that is subject to the public notice requirements for a permit or permit revision shall pay a fee that is equivalent to the cost of publication of the public notice in a major newspaper in the facility's area.

If the District accepts a facility's demonstration that its potential to emit is less than the major facility thresholds defined in Section 2-6-212, Schedule P will no longer apply to the facility. This review will be handled without additional charges.

4. PERMIT CONTENT

EPA has listed specifications for permit content for federal operating permits in 40 CFR 70.6 (Code of Federal Regulations).

The permit content for Title V permits will be more comprehensive than for current District permits. Until now, District permits have listed only plant numbers, source numbers, source names, and the specific permit conditions that apply to each source. Other district, state, and federal requirements are in the regulations, and these requirements are rarely reiterated in the permit. Major facility review permits are required to list all applicable requirements in the permit, the origin of the requirements, and to specify which requirements are federally enforceable.

Following is a list of the required elements of major facility review permits:

1. Citations of or conditions containing applicable requirements, including the origin of each requirement
2. Permit duration
3. Terms and conditions for reasonably anticipated operating scenarios
4. Terms and conditions for the trading of emissions if the permit applicant requests them
5. Compliance
6. Monitoring
7. Reporting and recordkeeping requirements
8. Emergency provisions
9. For sources subject to the acid rain requirements, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder
10. A severability clause
11. Standard conditions to implement EPA Title V regulations and 40 CFR 70
12. A requirement to pay fees
13. Provisions regarding the federal enforceability of conditions

14. Inspection and entry requirements
15. Requirements for compliance certification

An explanation of each section is provided below. Items 8 through 15 above will be standard for all permits. The standard text for each is provided in subsections 4.8 through 4.15.

Additionally, a major facility review permit may include a provision for a permit shield, as defined in Section 2-6-233. This is further discussed in subsection 4.16 below.

4.1 Applicable Requirements

The permit must contain any applicable local and state requirements, and federal requirements imposed by the Clean Air Act. The federal operating permit program does not impose any new emission standards or limitations, but there is a requirement for all existing standards and limitations to be included in the permit.

If the facility is subject to the acid rain program, this part of the permit must specify that if an applicable requirement of the Clean Air Act is more stringent than a requirement of the acid rain regulations, both requirements must be included in the permit, and both shall be enforceable by EPA.

If the facility is operating under an alternative emission control plan (AECPP) issued pursuant to a District rule in Regulation 8, its major facility review permit shall contain provisions or permit conditions that specify each applicable AECPP standard in that rule. These standards ensure that any resulting emission limit has been demonstrated to be quantifiable, accountable, enforceable and based on replicable procedures.

4.2 Permit Duration

The permit term shall be set at five years unless both the District and the facility agree to a shorter term. The expiration date will be stated in the permit. When a permit is reopened, the expiration date will not change.

If a new requirement is promulgated, and there are less than three years remaining on the permit, the facility is required to comply with the requirement, but the permit is not reopened until the permit is renewed.

4.3 Terms and Conditions for Reasonably Anticipated Operating Scenarios

Facilities may describe more than one operating scenario. An operating scenario is a mode of operation. For example, a refinery makes gasoline with a low Reid vapor pressure in the summer and a high Reid vapor pressure in the winter. If the

process changes are significant, it may be advantageous to the refinery to permit both modes of operation as operating scenarios.

Permits are generally written to reflect the operations as described in a permit application. If various modes of operation are used, and only one is described in the permit, the facility is at risk of receiving violation notices.

All operating scenarios must be in compliance with District regulations and other applicable requirements. Within that limitation, operating scenarios for normal, seasonal, start-up, and shutdown operations can be permitted. Changes of process, feed, and products can also be permitted.

If more than one operating scenario is permitted for the plant, the following permit condition will be in the permit:

"The facility must keep a contemporaneous record in a log when switching from one operating scenario to another."

4.4 Terms and Conditions for Emissions Trading

Sections 306 and 418 of Regulation 2, Rule 6 deal with emissions trading. A provision for emissions trading among two or more sources can be included in the permit if the facility agrees to an emissions cap; has procedures and recordkeeping requirements that make the trades quantifiable and federally enforceable; the provision does not interfere with an existing emission limit, and emissions trading is not in violation of Regulation 2, Rules 1 and 2, or any other applicable requirement.

The procedure for adding emission trading provisions into a major facility review permit is as follows: 1) the facility must obtain approval for appropriate permit conditions by applying in accordance with Regulation 2, Rule 1; 2) the resulting permit conditions must be incorporated into the major facility review permit.

4.5 Compliance

A compliance schedule is required for all major facility review permits, even for those plants that do not have any outstanding compliance issues. The compliance schedule shall include the following:

- A. For applicable requirements with which the facility is in compliance, the schedule will simply contain a statement that the facility will continue to comply with all such requirements.

- B. For applicable requirements that will become effective during the permit term, the schedule will contain a statement that the facility will meet such requirements on a timely basis.
- C. For applicable requirements with which the facility is not in compliance at the time of permit issuance, a schedule of compliance including a list of remedial measures, including an enforceable sequence of actions with milestones, which will lead to compliance. This schedule will resemble and be at least as stringent as that contained in any consent decree or administrative order to which the facility is subject. If a schedule of compliance has been issued by the District's Hearing Board, the California Air Resources Board, the Environmental Protection Agency, or any court, it must be included in the permit. The schedule will be supplemental to the applicable requirement on which it is based, and will not sanction non-compliance.

State law does not allow the District to issue a District or Title V permit to a facility that is out of compliance unless the facility holds a variance or the Hearing Board issues an order of abatement to the facility. If the Hearing Board does issue a variance or order of abatement, the District will include them in the permit as part of the Schedule of Compliance.

The facility is subject to enforcement by EPA even if it has a variance or a schedule of compliance. A variance shields the facility from enforcement by the District, but an order of abatement does not.

When a plant has a schedule of compliance that obliges the plant to take some action, the permit shall require that the plant submit progress reports at least every six months, unless more frequent reports are required by the APCO.

The permits will require that the responsible official for the facility submit an annual certification of compliance. The certification must list each applicable requirement, the compliance status, whether compliance was continuous or intermittent, the method used to determine compliance, and any other specific information required by the permit. The certification shall contain a statement that it is true, accurate, and complete, after reasonable inquiry, and be signed by a responsible official. The compliance certification must be submitted directly to EPA as well as to the District.

Monitoring, recordkeeping, and reporting are also required to enable the District to determine if a facility is in compliance with the regulations.

4.6 Monitoring Requirements

Applicable monitoring requirements are contained in the District's regulations and Manual of Procedures; Federal New Source Performance Standards; National Emissions Standards for Hazardous Air Pollutants; Title IV, Section 129 of the Clean Air Act; and permit conditions. Sections 114 and 504 of the Clean Air Act also have provisions that allow EPA to promulgate further monitoring requirements. These requirements are contained in the Code of Federal Regulations under 40 CFR 64, Compliance Assurance Monitoring.

The requirements in the above regulations contain extensive instructions on monitoring procedures. They include details on the calibration of instruments, source testing for verification, number of data points per time period, averaging, and statistical analysis. Such requirements will be included in the permit by reference.

If a facility is not required by rules, regulations or statutes to engage in periodic testing or monitoring, the major facility review permit shall require periodic monitoring that is sufficient to ensure compliance. Records of material consumption may be enough to fulfill this requirement.

4.7 Recordkeeping and Reporting Requirements

The permit shall contain all the recordkeeping requirements in the applicable requirements and shall add any recordkeeping necessary to determine compliance. The permit shall require the use of terms, test methods, units, averaging periods, and other conventions consistent with the applicable requirements.

The required records must also include the following information:

- The date, place, and time of each data point
- If an analysis is required, the date of the analysis and the person or company that performed the analysis
- The analytical technique used
- The results of the analysis
- The operating conditions at the time of sampling or measurement

All records, including strip-chart recordings, calibration records, and maintenance records, must be kept for a period of at least five years.

A report of all required monitoring must be submitted to the Director of Compliance and Enforcement every six months, in addition to any other reporting requirements. All instances of non-compliance shall be clearly identified in the report even if the non-compliance has already been reported. The report shall be certified by a responsible official as true, accurate, and complete, after reasonable inquiry.

The reporting periods shall be clearly defined in the permit. Facilities shall have one month after the end of the reporting period to prepare and submit the report.

In addition, all instances of non-compliance with the permit shall be reported in writing to the Enforcement Division of the District within ten calendar days of the discovery of the non-compliance. Within thirty calendar days of the discovery of any incident of non-compliance, the facility shall submit a written report including the probable cause of non-compliance and any corrective or preventative actions. The non-compliance reports shall be certified by a responsible official as true, accurate, and complete, after reasonable inquiry. Following is the standard condition regarding monitoring reports and reports of non-compliance.

“Reports of all required monitoring must be submitted to the District at least once every six months, except where an applicable requirement specifies more frequent reporting. The first reporting period for this permit shall be [date of issuance] to [six months later]. The report shall be submitted by [one month after end of reporting period]. Subsequent reports shall be for the following periods: [____ 1st through ____ 30th or 31st] and [____ 1st through ____ 30th or 31st], and are due on the last day of the month after the end of the reporting period. All instances of non-compliance shall be clearly identified in these reports. The reports shall be certified by the responsible official as true, accurate, and complete. In addition, all instances of non-compliance with the permit shall be reported in writing to the District’s Compliance and Enforcement Division within 10 calendar days of the discovery of the incident. Within 30 calendar days of the discovery of any incident of non-compliance, the facility shall submit a written report including the probable cause of non-compliance and any corrective or preventative actions. The reports shall be sent to the following address:

Director of Compliance and Enforcement
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
Attn: Title V Reports”

4.8 Emergency Provisions

An emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, that requires the permittee to take immediate corrective action to restore normal operation and that causes the permittee to exceed an emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency.

The District validates emergencies in two ways: through the granting of breakdown relief in accordance with District Regulation 1, Section 433, or by the granting of a

variance pursuant to Health and Safety Code Section 42350 et seq. by the District's Hearing Board. However, the validation by the District of any such emergency will not provide relief from federal enforcement. In order to make explicit reference to the emergency provisions authorized by District regulation and by state law, the permit will contain the following provisions:

"The permit holder may seek relief from enforcement action in the event of a breakdown, as defined by Section 1-208 of the District's Rules and Regulations, by following the procedures contained in Regulation 1, Sections 431 and 432. The District will thereafter determine whether breakdown relief will be granted in accordance with Regulation 1, Section 433.

"The 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. The Hearing Board will determine after notice and hearing whether variance relief should be granted in accordance with the procedures and standards set forth in Health and Safety Code Section 42350 et seq. "

"The granting by the District of breakdown relief or the issuance by the Hearing Board of a variance will not provide relief from federal enforcement."

Below is the text, with explanations, for subsections 4.9 through 4.15. The text is in quotations.

4.9 Acid Rain Allowance Condition

"Acid Rain Facilities: Each acid rain facility shall hold one sulfur dioxide allowance on January 30 for each ton of sulfur dioxide emitted during the preceding year from January 1 through December 31."

4.10 Severability Clause

"In the event that any provision of this permit is invalidated by a court or tribunal of competent jurisdiction, or by the Administrator of the EPA, all remaining portions of the permit shall remain in full force and effect."

This provision means that if part of the permit is disputed by any person, the rest of the permit shall remain valid. This provision should not be confused with the provision in Regulation 1, also called severability, that states that in the case of a dispute about some part of the regulations, the rest of the regulations shall remain valid.

4.11 Standard Conditions to Implement EPA Title V Regulations and 40 CFR 70

"The permit holder shall comply with all conditions of this permit. The permit consists of this document and all appendices. Any non-compliance with the terms and conditions of this permit will constitute a violation of the law and will be grounds for enforcement action; permit termination, revocation and reissuance, or revision; or denial of a permit renewal application."

"In the event any enforcement action is brought as a result of a violation of any term or condition of this permit, the fact that it would have been necessary for the permittee to halt or reduce the permitted activity in order to maintain compliance with such term or condition shall not be a defense to such enforcement action."

"This permit may be modified, revoked, reopened and reissued, or terminated for cause."

"The filing of a request by the facility for a permit revision, revocation and reissuance, or termination, or the filing of a notification of planned changes or anticipated non-compliance does not stay the applicability of any permit condition."

"This permit does not convey any property rights of any sort, or any exclusive privilege."

"The permit holder shall supply any information that the District requests in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit within 30 days."

"Any records required to be maintained pursuant to this permit which the permittee considers to contain proprietary or trade secret information shall be prominently designated as such. Copies of any such proprietary or trade secret information which are provided to the District shall be maintained by the District in a locked confidential file, provided, however, that requests from the public for the review of any such information shall be handled in accordance with the District's procedures set forth in Section 11 of the District's Administrative Code."

"The responsible official shall certify all documents submitted by the facility pursuant to the major facility review permit. The certification shall state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. The certifications shall be signed by a responsible official for the facility."

"The emissions inventory submitted with the application for a Major Facility Review Permit is an estimate of actual emissions or the potential to emit for the time period stated and is included only as one means of determining applicable requirements

for emission sources. It does not establish, or constitute a basis for establishing, any new emission limitations."

4.12 Requirement to Pay Fees

"The permit holder shall pay annual fees in accordance with District Regulation 3, including Schedule P."

4.13 Provisions Regarding the Federal Enforceability of Conditions

The programs that are contained in the Clean Air Act are considered to be federally enforceable. These programs include, but are not limited to, Federal New Source Review, New Source Performance Standards, any rule approved into the State Implementation Plan, Acid Rain Requirements, National Emissions Standards for Hazardous Air Pollutants, Title VI requirements regarding to Ozone-Depleting Compounds, and Section 112 requirements regarding to hazardous air pollutants. EPA is able to take enforcement action with respect to any violation of the Clean Air Act programs. This is known as federal enforceability.

All requirements or permit conditions in a permit, even those that are not written to conform to these federal programs and that are not designated as federally enforceable, will become federally enforceable if EPA accepts the permit as written during their permit review period. Any change to a federally enforceable requirement or condition requires formal EPA review. The main advantages in designating some requirements or conditions as non-federally enforceable is that changes to these conditions are not subject to EPA review and that EPA may not request additional monitoring to ensure compliance with the requirement or permit condition. Conditions that are not federally enforceable will be marked with an asterisk. Requirements that are not federally enforceable shall be designated as such in the permit tables. The permit condition section will contain the following language:

"Any condition that is preceded by an asterisk is not federally enforceable."

4.14 Inspection and Entry Requirements

"Access to Facility: The permit holder shall provide reasonable access to the facility and equipment which is subject to this permit to the APCO and/or to his or her designee."

4.15 Requirements for Compliance Certification

"Compliance certifications shall be submitted annually by the responsible official of this facility to the Bay Area Air Quality Management District and to the

Environmental Protection Agency. The certification period shall start on [date] of every year and shall end on [12 months after initial date] of every year. The compliance certification shall be due [one month after the end of certification period]. The certification must list each applicable requirement, the compliance status, whether compliance was continuous or intermittent, the method used to determine compliance, and any other specific information required by the permit. The certification shall contain a statement that it is true, accurate, and complete, after reasonable inquiry, and be signed by a responsible official. The permit holder may satisfy this requirement through submittal of District-generated Compliance Certification forms. The certification should be directed to the District's Compliance and Enforcement Division at the address above, and a copy of the certification shall be sent to the Environmental Protection Agency at the following address:

Director of the Air Division
USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attention: Air-3

4.16 Permit Shield

A facility may include a proposal for a permit shield in its application for a major facility review permit. The permit shield identifies statutory and/or regulatory provisions that do not apply to a source or group of sources. Once the shield is in place, enforcement actions and litigation may not be initiated against the source(s) covered by the shield that would be based on those identified regulatory and statutory provisions. The permit shield is an optional, not required, element of the major facility review permit. The following condition will be included in the permit shield section of the permit:

"Pursuant to District Regulations 2-6-233 and 2-6-409.12, the federally enforceable regulations and/or standards cited in the following table[s] do not apply to the source or group of sources identified at the top of the table[s]. Enforcement actions and litigation may not be initiated against the source or group of sources covered by this shield based on the regulatory and/or statutory provisions cited, as long as the reasons listed below remain valid for the source or group of sources covered by this shield." [The permitting engineer will prepare tables specifying sources and provisions covered by the shield(s)]

The permit may also include a second type of permit shield. Where there are multiple overlapping requirements for control of the same pollutant together with multiple monitoring, recordkeeping, and reporting requirements, the facility may request that the permit subsume the monitoring, recordkeeping, and reporting that is associated with the less stringent limits. The facility must demonstrate that the monitoring, etc. for

the most stringent limits will assure compliance with the less stringent limits. If the facility cannot make the demonstration, the facility or the District may propose monitoring, etc. that assures compliance with all limits and subsume the monitoring prescribed in the standards.

To implement the second type of permit shield, the following condition will be included in the permit shield section of the permit:

“Pursuant to District Regulations 2-6-233.2 and 2-6-409.12, as of the date this permit is issued, the federally enforceable monitoring, recordkeeping, and reporting requirements cited in the following table for the source or group of sources identified at the top of the table[s] are subsumed by the monitoring, recordkeeping, and reporting for more stringent requirements or by a “hybrid” monitoring scheme. The District has determined that compliance with the requirements listed below and elsewhere in this permit will assure compliance with the substantive requirements of the subsumed monitoring requirements. Enforcement actions and litigation may not be initiated against the source or group of sources covered by this shield based on the subsumed monitoring requirements cited.”

5. TRADE SECRETS AND AVAILABILITY OF INFORMATION

The Clean Air Act and the Title V regulations require that the content of permit applications, compliance plans, emissions or compliance monitoring reports, and compliance certifications be made available to the public, subject to certain restrictions. Information about emissions and the contents of permits is not restricted. These documents shall be available for review at the District office.

The procedures concerning public inspection of District records and the protection of confidential information are described in detail in Section 11 of the Bay Area Air Quality Management District Administrative Code.

6. PUBLIC PARTICIPATION & EPA REVIEW

One of the purposes of Title V is to allow the public and EPA additional opportunity to review the emissions and permits. Before a permit can be issued, both the public and EPA must be notified.

6.1 Major Facility Review Permits

6.1.1 Public Notice

The District must publish a public notice in a major newspaper at least thirty days before the District intends to issue a permit. The notice must identify the facility by name and address and must include information about the operation that will receive a permit, any proposed change in emissions, a District source for further information, and a brief description of the procedures to be followed by interested members of the public who wish to participate in the public comment period or wish to request a hearing.

Generally, the notice inviting public comment will specify that interested parties should submit their comments on any terms and conditions of the proposed permit, in writing, by a given date, to a named District staff member.

The APCO may decide to hold a public hearing to receive oral comments in advance of taking action on the proposed permit. If a public hearing is deemed necessary, any persons who have submitted written comments or have requested notification will be given advance notice of the date and time of the public hearing. The date and time of the public hearing will also be the subject of a public notice published in a major newspaper in the area where the facility to be permitted is located. The hearing shall be scheduled at least 30 days after the notice is published.

The procedures to be followed at any such public hearing will be informal, and the hearing will be moderated by the APCO or a delegated representative. The moderator of the hearing may limit the amount of time allocated to each member of the public who wishes to speak and may specify other reasonable procedures which assure that the hearing is conducted in an orderly and expeditious manner (such as to limiting comments to those related to the air quality impacts of the facility permit). The moderator will prepare a brief written summary of each comment received at the public hearing; this summary will become part of the official District record on the proposed permit.

No decision regarding the issuance of the permit, or regarding any of the proposed terms and conditions of the permit will be made at the public hearing. The District will respond in writing to all written comments received in the 30-day public comment period and to all oral comments made at the public hearing. The District's written response may be in the form of a single document addressing all specific concerns raised during the public comment period and/or at the public hearing.

Any decision or action pertaining to the issuance or denial of a Title V permit by the District in accordance with District Regulation 2, Rule 6, may be appealed to the District's Hearing Board under Health and Safety Code Section 42302.1.

The District will issue the permit at the end of the EPA review period and the public comment period, if EPA has no objections.

If EPA does not object to the permit, any person may petition EPA to reconsider the matter within 60 days after the conclusion of the EPA review period. Information about the opening and closing of the EPA review period is available on the EPA web site (www.epa.gov/region9). The petition must be based on objections raised in the public comment period, or in any public hearing, unless the grounds for the objection arose after the close of the original comment period or the petitioner demonstrates that it was impracticable to do so.

6.1.2 EPA Review

The District shall send the proposed permit to EPA for review at the same time that the public notice is published or after the public comment period, at the APCO's discretion. If the proposed permit has been submitted to EPA, and substantial changes are made due to public comments, the APCO shall withdraw the permit from EPA review, and resubmit a revised proposed permit to EPA, restarting the 45-day review period.

EPA has 45 days to review the permit terms and conditions and accept or object to them in writing. If the EPA does not respond within 45 days, the District may issue the permit.

If the EPA objects to the proposed permit within 45 days, the District may not issue the permit as proposed. The District shall submit revisions to EPA that address EPA's objections within 90 days of receipt of EPA's objection and issue the permit.

As stated above, any person may petition EPA to reconsider the matter within 60 days after EPA's review period, based on objections raised in the public comment period or hearing. If EPA objects to the permit based on any such petition, the District is obliged to reopen the permit. If EPA and the District do not reach an agreement concerning the permit, EPA may modify, terminate, or revoke and reissue the permit.

6.1.3 Availability of Information

The District is obliged to make information about the permit available to the public. In particular, the contents of the permit and information about emissions are not confidential. The contents of permit applications, compliance plans, monitoring and compliance certification reports are also available to the public, subject to the restrictions of Section 422 of Rule 2-6. These restrictions are described in the Trade Secret section, Volume II of the Manual of Procedures, Part 2.

6.2 Synthetic Minor Operating Permits

The District shall send a copy of each final permit for a synthetic minor facility to EPA for publication after issuance.

6.3 Appeals and Objections

Appeals to a District decision to issue a major facility review permit may be made by an applicant or a member of the public.

6.3.1 Applicant

The District will publish a public notice prior to issuing a permit. If an applicant is dissatisfied with the terms and conditions of the proposed permit, the applicant may comment and/or request a hearing during the 30-day comment period after public notice. If the District agrees to hold a hearing, the applicant will be able to present his or her case during the public hearing. If the permit is not revised in response to comments or a hearing, the applicant may petition EPA on the grounds raised in his or her comments and/or public hearing.

If the District denies the permit, the applicant may appeal to the District's Hearing Board in accordance with Section 42302.1 of the Health and Safety Code. The appeal must be received by the Hearing Board within 30 days after the receipt of the notice of the denial.

6.3.2 Public

Any member of the public may review the proposed permit and the facility's proposed emissions or change in emissions at the District office when the District publishes a public notice announcing that a permit will be issued to a facility.

Likewise, any member of the public may submit a comment on a proposed permit, may request a hearing, and may testify at a hearing that is held to discuss a permit.

Any person may petition EPA to reconsider any matter raised in the public comment period and in any public hearing within 60 days after the conclusion of the EPA 45-day review period.

Any person may appeal any decision or action pertaining to the issuance of a Title V permit to the District's Hearing Board in accordance with Section 42302.1 of the Health and Safety Code. The appeal must be received by the Hearing Board within 30 days after issuance of the permit. Information about issuance of the permit is available on the District's web site (www.baaqmd.gov/permit/t5/NOTIFICA.HTM).

7. DISTRICT PERMITTING PROCEDURES

7.1 Major Facility Review Permits

The District will determine whether any major facility review application is complete within 60 days of receipt of the application. Applications are date-stamped with the date of receipt. If the District does not inform the applicant within 60 days that the application is incomplete, the application will be deemed complete as of the date of receipt.

The District may consider the application to be "administratively" complete, if the District has sufficient information to begin writing the permit. The minimum elements necessary to consider an application "administratively" complete" are submission of the fees and the following forms:

- Stationary Source Summary
- Total Stationary Source Emissions
- Certification Statement

The applicant is obligated to submit further information that the District requests in writing within the date specified on the request, even if the application is "administratively" complete. If an applicant does not respond to requests for information, the application will be declared incomplete, the applicant will lose the application shield, and the applicant will be subject to enforcement action for operating without a Title V permit.

The District will determine whether any minor revision application is complete within 30 days of receipt of the application. If the District does not inform the applicant within 30 days that the application is incomplete, the application will be deemed complete as of the date of receipt.

After the receipt of a complete application from a facility, the District will write a permit. When the proposed permit is complete, the District will issue a public notice informing the public that a permit has been written and that the 30-day public comment period has begun. The District will also send a copy of the proposed permit to the applicant.

A public hearing on the proposed permit may be scheduled at the discretion of the APCO.

The District will submit the proposed permit to the EPA for review either concurrently with the publication of the public notice or after the 30 days public comment period has ended.

If a hearing is held, the District will submit the proposed permit to the EPA for review after the hearing. If a hearing is scheduled after the permit has been submitted to EPA, the District shall withdraw the permit and resubmit it after the public hearing.

The EPA has 45 days to review and accept or object to the proposed permit. The District may issue the permit at any time after the 45-day period has elapsed if the EPA has not objected to the permit. If EPA does object, the District shall make appropriate revisions and issue the permit. If the District does not make the revisions and issue the permit, EPA may issue, revise, or deny the permit.

Within 60 days after the 45-day EPA review period has ended, any member of the public may petition EPA to reconsider the matter. The request must be based on comments given during the public comment period or during any public hearing unless the petitioner demonstrates that it was impracticable to raise such objections within such time period, or unless the grounds for such objection arose after such period. If the EPA objects to the permit due to a public petition, the permit may be reopened by the EPA and modified or revoked. (EPA publishes the beginning and end of the EPA review period on their website at www.epa.gov/region9).

The District will take final action on initial permits (except as specified below), significant permit revisions, and renewals within eighteen months after the application is complete. This period will include the public comment period and EPA review period. Final action means the issuance or denial of a permit.

By July 1, 2001, the District will issue permits to all of the major facilities that submitted applications before July 25, 1996.

Minor permit revision procedures

An applicant for a minor permit revision shall apply for the revision and an authority to construct or permit to operate in accordance with Regulation 2, Rule 1, concurrently.

If the applicant applies for an authority to construct, the minor permit revision will be sent to EPA for a 45-day review period when the authority to construct is issued. The applicant is permitted to act on the authority to construct immediately. The District shall issue the minor permit revision to the major facility review permit within 15 days after the end of the EPA review period. The revision to the permit shall apply when the facility builds or installs the source.

If the applicant applies for a permit to operate, such as when the equipment is existing and only permit conditions are changed, the minor permit revision will be sent to EPA for a 45-day review period when the District permit to operate is issued. The applicant is allowed to make the change in operation as soon as the permit to operate is issued. The District shall issue the minor permit revision to the major facility review permit within 15 days after the end of the EPA review period.

The District will take final action on minor permit revisions within ninety days after the application is complete or 15 days after the end of EPA's 45-day review period, whichever is later. In this case, final action means the issuance or denial of a permit revision. There will be no public comment period for minor revisions.

7.2 Synthetic Minor Operating Permits

The District will determine whether any application for an initial synthetic minor operating permit or for a synthetic minor operating permit revision is complete within 30 days of receipt of the application. If the District does not inform the applicant within 30 days that the application is incomplete, the application will be deemed complete as of the date of receipt. The APCO and the applicant may agree on a longer time period to determine completeness.

The applicant is obligated to submit further information within 30 days of a written request, even if the application is complete.

After the receipt of a complete application from a facility, the District will write a permit. When the proposed permit is complete, the District will issue the permit and send a copy of the permit to the EPA.

The District will take final action on synthetic minor operating permits within 180 days after the application is complete. Final action means the issuance or denial of a permit.

8. TITLE IV: APPLICABILITY

Title IV is an EPA program designed to reduce acid rain. Acid rain is produced when SO₂, SO₃, and NO_x are emitted into the air. These pollutants combine with the moisture in air and become nitric acid and sulfuric acid. The acids are removed from the air by rainfall and are deposited on land and water. The name for these deposits is "acid rain." Acid rain has been implicated in the deterioration of lakes and forests.

Much of the SO₂, SO₃, and NO_x that is emitted into the air comes from the generation of electricity. Large power plants burn coal, oil, and gas to drive gas turbines and to produce steam to drive steam turbines. Coal and oil are fossil fuels and contain varying amounts of sulfur that becomes SO₂ and SO₃ when burned. Natural gas is also a fossil fuel. However, most natural gas contains very little sulfur.

NO_x is formed when air, containing nitrogen and oxygen, is brought to high temperatures in combustion and other processes. NO_x is formed during the burning of natural gas as well as coal and oil.

EPA is implementing Title IV through the permit program established in Title V. Facilities that are subject to Title IV must apply for major facility review permits, are subject to monitoring requirements by November 1994, and must submit the acid rain portion of their applications by January 1, 1996. These facilities will also be required to hold one SO₂ "allowance" for every ton of SO₂ that the facility emits. An allowance is an authorization from the EPA to emit one ton of SO₂.

The federal acid rain rules are contained in the Code of Federal Regulations Parts 40 CFR 72 through 40 CFR 78. This portion of the permit handbook will summarize the definitions that determine applicability.

The acid rain program has been divided in two parts: Phase I and Phase II. Large coal-burning utilities were included in Phase I. EPA named these facilities in Section 404 of the Clean Air Act. There are no Phase I facilities in California. The rest of the facilities that will be subject to the acid rain program are part of Phase II.

The terms below are used in the following discussion.

A "unit" is a fossil-fueled combustion device.

An "affected unit" is a unit that is subject to Title IV.

A "utility" is any person who sells electricity.

A "generator" is a device that produces electricity.

Equipment that does not burn fossil fuels is exempt from Title IV.

Existing utility units (commencing operation before November 15, 1990) are subject to Title IV unless they serve a generator with a capacity not greater than 25 MW.

Units that serve generators that do not sell electricity are exempt.

Some cogeneration units, independent power plants, qualifying facilities, solid waste incinerators, simple combustion turbines, and new facilities are exempt.

A cogeneration unit is a unit where the combustion provides energy to supply steam or heat for other purposes in addition to producing electricity. Cogeneration units may be subject to the acid rain program when they sell more than one-third of the electricity they produce and more than 219,000 MW-hrs per year. If the facility keeps more than two-thirds of the electricity it produces, it would not be subject to the acid rain program regardless of size.

If a cogeneration facility does sell more than one-third of the electricity and sells more than 219,000 MW-hrs per year produced by a unit, it may still be exempt from the acid rain program. To be exempt, a facility would have to be a qualifying facility or an independent power facility and must meet two other requirements.

The "qualifying facility" term is defined in 18 CFR 292. Two types of plants may be qualifying facilities: cogeneration plants that meet certain efficiency requirements and alternative energy plants. The last are called "small power production facilities." Qualifying facilities have to meet ownership criteria. No more than 50 percent of the facility's equity interest can be held by electrical utilities.

There are two types of cogeneration facilities. Facilities that produce electricity first and use the reject heat afterward for a second purpose are "topping-cycle facilities." Facilities that use the reject heat to make electricity are "bottoming-cycle facilities." These facilities must comply with the following applicable efficiency standards to qualify for the exemption:

Topping-cycle facilities: If the facility burns oil or natural gas and the installation began after March 12, 1980, the useful power output plus one-half of the useful thermal energy output must be no less than 42.5 percent of the total energy output. However, if the useful thermal energy output is less than 15 percent of the total energy output of the facility, the useful power output plus one-half of the useful thermal energy output must be no less than 45 percent of the total energy output. Other topping-cycle facilities have no efficiency standards.

Bottoming-cycle facilities: If the facility burns oil or natural gas and the installation began after March 12, 1980, the useful power output of the facility must be no less

than 45 percent of the total energy input for supplementary firing. In this case, supplementary firing means energy input used only in the electric generating process. Other bottoming-cycle facilities have no efficiency standards.

Cogeneration facilities must be certified by the Federal Energy Regulatory Commission to be considered qualifying facilities.

The second type of facility that can be considered as "qualifying" is the "small power production facility." These types of facilities use alternative energy sources for their main energy input. The allowable sources of energy are: biomass, waste, renewable resources, geothermal resources, solar energy, wind energy, or any combination of the above. Fossil fuels may not supply more than 25 percent of the energy input to the facility, and the power output of the facility cannot be greater than 80 MW.

Small power production facilities must be certified by the Federal Energy Regulatory Commission to be considered qualifying facilities.

An "independent power production facility" is one that is nonrecourse project-financed as defined in 10 CFR 715, sells at least 80 percent of its output at wholesale, is required to hold SO₂ allowances, and is not majority owned by public utilities. "Nonrecourse project-financed" is an ownership/financing test to ensure that the facility is independent.

Qualifying and independent power production facilities are exempt if, as of November 15, 1990, they possessed qualifying power purchase commitments to sell at least 15 percent of the total planned net output capacity and if the net power output capacity is not greater than 130 percent of the planned (design) net output capacity. These conditions ensure that small facilities that are not able to obtain allowances due to their contractual commitments will not suffer undue hardship.

Solid waste incinerators that produce electricity will be exempt if fossil fuels provide no more than 20 percent of the energy input to the facility.

Simple combustion turbines that began operation before November 15, 1990, are exempt.

New units that serve one or more generators with a total capacity of 25 MW or less and that burn fuels with a sulfur content of 0.05 percent or less by weight are exempt. A written petition for this exemption must be submitted to the District. The exemption will have a term of five years unless the unit fails to comply with the conditions of the exemption. Other new units will not be exempt even if they serve one or more generators with a total capacity of 25 MW or less.

Facilities that are not exempt will have to comply with the emission limitations of Section 405 of the Clean Air Act and will have to obtain allowances for their SO₂ emissions.

GLOSSARY

Act

The federal Clean Air Act, its 1990 amendments, and implementing regulations.

CAA

The federal Clean Air Act

CFR

The Code of Federal Regulations. 40 CFR contains the implementing regulations for federal environmental statutes such as the Clean Air Act. Parts 50-99 of 40 CFR contain the requirements for air pollution programs.

EPA

The federal Environmental Protection Agency.

Existing Major Facility

Facility that was major on July 24, 1995.

Federally Enforceable

All limitations and conditions which are enforceable by the Administrator of the EPA including those requirements developed pursuant to 40 CFR Part 51, subpart I (NSR), Part 52.21 (PSD), Part 60, (NSPS), Part 61, (NESHAPS), Part 63 (MACT), and Part 72 (Permits Regulation, Acid Rain), and also including limitations and conditions contained in operating permits issued under an EPA-approved program that has been incorporated into the SIP.

HAP

Hazardous Air Pollutant. Any pollutant listed pursuant to Section 112(b) of the Act.

Major Facility, MFR

A facility with potential emissions of regulated air pollutants greater than 100 tons per year, greater than 10 tons per year of any single hazardous air pollutant, and/or greater than 25 tons per year of any combination of hazardous air pollutants, or such lesser quantity as determined by the EPA administrator.

MACT

Maximum Available Control Technology. Control technologies for HAPs based on source categories. Mandated by Title I, Section 112 of the Act, and implemented by 40 CFR Part 63.

MFR

Major Facility Review. The District's term for the federal operating permit program mandated by Title V of the Act and implemented by District Regulation 2, Rule 6.

MOP

The District's Manual of Procedures.

NESHAPS

National Emission Standards for Hazardous Air Pollutants. Contained in 40 CFR Part 61.

NSPS

Standards of Performance for New Stationary Sources. Federal standards for emissions from new stationary sources. Mandated by Title I, Section 111 of the Act, and implemented by both 40 CFR Part 60 and District Regulation 10.

NSR

New Source Review. A federal program for preconstruction review and permitting of new and modified sources of air pollutants. Mandated by Title I of the Clean Air Act and implemented by 40 CFR Parts 51 and 52, the California Clean Air Act, as well as District Regulation 2, Rule 2.

Phase II Acid Rain Facility

A facility that generates electricity for sale through fossil-fuel combustion and by virtue of certain other characteristics (defined in Regulation 2, Rule 6) is subject to Titles IV and V of the Clean Air Act.

Potential to Emit

The maximum capacity of a facility to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the facility to emit a pollutant, including pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed shall be treated as a part of its design only if the limitation is enforceable.

PSD

Prevention of Significant Deterioration. A federal program for permitting new and modified sources of air pollutants for which the District is classified "attainment" of the National Air Ambient Quality Standards. Mandated by Title I of the Act and implemented by both 40 CFR Part 52 and District Regulation 2, Rule 2.

SIP

State Implementation Plan. State and District programs and regulations approved by EPA and developed in order to attain the National Air Ambient Quality Standards. Mandated by Title I of the Act.

Synthetic Minor Facility

A facility which obtains federally enforceable conditions on its permit to operate that limit its potential to emit to below the thresholds for a major facility.

Title V

Title V of the federal Clean Air Act. Requires a federally enforceable operating permit program for major and certain other facilities.