

**Bay Area Air Quality Management District**

**939 Ellis Street  
San Francisco, CA 94109**

**Proposed Amendments to  
BAAQMD Regulation 2, Rule 6,  
Major Facility Review,**

**Regulation 1,  
General Provisions and Definitions,**

**Regulation 2, Rule 1,  
General Requirements, and**

**Manual of Procedures, Volume II, Part 3,  
Major Facility Review Permit Requirements**

**Staff Report**

**April 17, 2001**

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## **STAFF REPORT**

Regulation 2, Rule 6, Major Facility Review,  
Regulation 1, General Provisions and Definitions,  
Regulation 2, Rule 1, General Requirements, and  
Manual of Procedures, Volume II, Part 3,  
Major Facility Review Permit Requirements

### **EXECUTIVE SUMMARY**

The District proposes to amend the following rules and MOP chapter to resolve the remaining issues identified by EPA as obstacles to final approval of the District's Title V program.

Regulation 2, Rule 6, Major Facility Review  
Manual of Procedures, Volume II, Part 3, Major Facility Review Permit  
Requirements (MOP)  
Regulation 1, General Provisions and Definitions  
Regulation 2, Rule 1, General Requirements

If EPA does not approve the Major Facility Review program by December 1, 2001, EPA will implement a Part 71 program in the Bay Area. If there is no approved program by June 1, 2003, EPA will be obligated to impose either of the sanctions specified in Section 179(b) of the Federal Clean Air Act—withdrawal of highway funds and imposition of a 2 to 1 offset ratio. By December 1, 2003, EPA will be obligated to impose both sanctions.

Major Facility Review is the District program that implements Title V of the Federal Clean Air Act (42 U.S.C. Section 7401 et seq.). It applies to major facilities and certain other facilities. Major facilities are facilities with a potential to emit, as defined, of 100 tons per year of any regulated air pollutant, 10 tons per year of any hazardous air pollutant, or 25 tons per year of any combination of hazardous air pollutants.

At this time, there are 97 recognized Title V facilities and 32 synthetic minor facilities.

Changes to the rule will also be made in order to:

- Reinstate the federal emission trading provisions.
- Correct the definitions of Independent Power Production Facility and Phase II Acid Rain Facility.
- Clarify that final action on permits may be appealed to the District's Hearing Board.

- Clarify the circumstances under which permits could be denied or revoked.
- Make minor changes and corrections to improve definitions, clarity and implementation.
- Remove impediments to permitting agricultural operations if the Health and Safety Code allows such permitting.

## **BACKGROUND**

### **Regulation 2, Rule 6**

#### **Rule Background**

The Board originally adopted Regulation 2, Rule 6, Major Facility Review, and the Manual of Procedures (MOP), Volume II, Part 3, Major Facility Review Permit Requirements, on November 3, 1993 to fulfill the requirement to implement a Title V program in the Bay Area. This program requires certain facilities to obtain federal operating permits.

The federal program is contained in Title V of the Federal Clean Air Act and parts 70 and 71 of Title 40 of the Code of Federal Regulations.

The rule now applies to major facilities, acid rain facilities, subject solid waste incinerators per section 129 of the Federal Clean Air Act, facilities in a source category designated by EPA, and synthetic minor facilities. Facilities that have emissions that are above 25 percent of the major source thresholds are subject to the requirement to determine applicability of the rule based on the facility's potential to emit.

#### **Rule Amendments**

EPA identified a number of issues as obstacles to full approval of the District's Title V program. This rule revision addresses the following:

- Insignificant activities
- Definition of "applicable requirement"
- Definition of "affected states"
- Notification of any refusal to accept a recommendation from affected states
- Reinstatement of the Federal emission trading provisions
- Requirement for certification of any document required by a Part 70 permit by a responsible official
- Additional requirements for progress reports submitted pursuant to a schedule of compliance
- Change to the definition of regulated air pollutant to include pollutants regulated under 112(g), (j) and (r) of the Clean Air Act

The following issues were resolved in previous rulemakings:

- Compliance with all applicable requirements
- Addition of a provision that requires certification of all monitoring reports and compliance certifications by a responsible official
- Notice to affected states

- Deletion of “but not limited to” from the definition of administrative amendment
- Corrections to the timeliness requirement for significant modifications
- Addition of a provision that a facility may not change their operation prior to completion of a permit revision, if the permit expressly prohibits the particular change
- Corrections to the processing deadlines for minor modifications
- Provision for public notice “by other means” than a newspaper notice “if necessary to assure adequate notice”
- Addition of a provision that requires compliance certifications more frequently than annually if required by a particular applicable requirement

The main impediment to approval of the District and other California program is the agricultural exemption contained in the Health and Safety Code Section 42310(e). The District also has an exclusion for agricultural operations in Regulation 1 and an exemption in Regulation 2, Rule 1. These sections will be modified so that the District can issue permits to agricultural operations if the Health and Safety Code allows the District to do so.

The following changes are also proposed in this rulemaking:

- Clarification of the circumstances under which permits could be denied or revoked
- Correction of the definition of Phase II Acid Rain facility and Independent Power Production Facility
- Modification of the definition of “federally enforceable” pursuant to EPA’s comment
- Modification of definition of “permit shield” pursuant to EPA’s comment.
- Correction of the reference in the definition of “modified source or facility” because it has changed
- Addition of the requirement that all documents submitted to the District that pertain to an application must also be sent to EPA, so that EPA’s application file will be kept current
- Appeal of any decision or action pertaining to the issuance of a Title V permit to the District’s Hearing Board, as required by State Law

The proposed amendments to the Manual of Procedures would make the MOP conform to the rule changes.

## Discussion

Full approval of the Bay Area Title V program:

The Bay Area program, as well as all of the programs in California, has interim approval. EPA has set a final deadline of December 1, 2001 for full approval of all Title V programs in the country. Seventeen interim approval issues have to be resolved to receive full approval. These issues were published in the Federal Register notice that conferred interim approval to the Bay Area's program on June 25, 1995. Some of the issues were resolved in previous rulemakings. Most of the rest will be resolved in this rulemaking, if the rule amendments are adopted.

The EPA deadline for program submittal is June 1, 2001. This rulemaking must be complete before program submittal. The proposed hearing date is May 2, 2001.

If the program is not approved by December 1, 2001, EPA will be forced to implement a Part 71 program in the Bay Area. Facilities will have one year to submit new applications to EPA. It is expected that preparation of the applications will be expensive because the applications will have to be more complete than the applications that were submitted to the District. The previous applications relied heavily on information that had already been submitted to the District or information generated by the District. The facilities will have to pay additional Title V fees to EPA, approximately \$40 per year per ton of emissions. EPA will have eighteen months to review the applications and write Title V permits for those facilities.

In addition, the Bay Area will be subject to sanctions. If the program is not approved by June 1, 2003, EPA will be obligated to impose either of the sanctions specified in Section 179(b) of the Federal Clean Air Act—withdrawal of highway funds and imposition of a 2-to-1 offset ratio. By December 1, 2003, EPA will be obligated to impose both sanctions.

The only impediment to full approval that cannot be resolved by the Bay Area District is the agricultural exemption.

**Agricultural Exemption:**

The Health & Safety Code Section 42310(e) states that a permit shall not be required for "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals..." EPA has stated that this exemption is an impediment to the full approval of all California programs because the District must be able to issue permits to all major facilities regardless of industry sector. This issue must be resolved at either the state or federal level before EPA can grant full approval to our Title V programs.

## **EMISSIONS AND EMISSION REDUCTIONS**

### **Emission Reductions Achieved by the Rule**

Air emissions from affected facilities are not expected to change due to the proposed amendments. The emission limitations that apply to the facility will not change with issuance of a Title V permit.

## **ECONOMIC IMPACTS**

### **Socioeconomic Impacts**

Subdivision (a) of Health and Safety Code section 40728.5 states:

(a) Whenever a district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, that agency shall, to the extent data are available, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation.

Since the change in the rule will have no impact on air quality or emissions limitations, an assessment of the socioeconomic impacts of the amendment are not required.

### **Incremental Costs**

Under Health and Safety Code Section 40920.6, the District is required to perform an incremental cost analysis for a proposed rule if the purpose of the rule is to meet the requirement for best available retrofit control technology or for a feasible measure pursuant to Section 40914. Since this amendment is neither, an incremental cost analysis is not required.

## **ENVIRONMENTAL IMPACTS**

The District has determined that these amendments to Regulation 2, Rule 6 are exempt from CEQA pursuant to State CEQA Guidelines Section 15061, subd. (b)(3).

The Title V permitting program is an administrative program that gives EPA staff oversight and enforcement authority over large industrial facilities. Although the EPA may impose monitoring or recordkeeping requirements, the Title V

permitting program does not add new or more stringent air emission control requirements for the facilities themselves. Consequently, District staff has determined with certainty that the proposed amendments will have no significant environmental impacts and thus are exempt under CEQA Guidelines Section 15061, subd (b)(3). The District intends to file a Notice of Exemption pursuant to State CEQA Guidelines, Section 15062.

## **REGULATORY IMPACTS**

Section 40727.2 of the Health and Safety Code imposes new requirements on the adoption, amendment, or repeal of air district regulations. It requires an air district to identify existing federal and district air pollution control requirements for the equipment or source type affected by the proposed change in district rules. The District must then note any differences between these existing requirements and the requirements imposed by the proposed change. Where the district proposal does not impose a new standard, make an existing standard more stringent, or impose new or more stringent administrative requirements, the district may simply note this fact and avoid the analysis otherwise required by the bill.

Regulation 2, Rule 6 and the Manual of Procedures, Volume II, Part 3, implement a federal program that has been delegated to the District. There are no state or federal rules that directly impose similar requirements. Therefore, the analysis is not required.

Pursuant to Section 40727 of the California Health and Safety Code, regulatory amendments must meet findings of necessity, authority, clarity, consistency, non-duplication, and reference. The proposed amendments are:

- Necessary to address issues identified by EPA during the federal approval process;
- Authorized by Sections 40000, 40001, 40702, 42300 et seq., and 40725 through 40728 of the California Health and Safety Code; 42 U.S.C. Section 7661; and 40 CFR 70;
- Written or displayed so that their meaning can be easily understood by the persons directly affected by it;
- Consistent with other District rules, and not in conflict with state or federal law;
- Non-duplicative of other statutes, rules, or regulations; and are implementing, interpreting, or making specific the provisions of California Health and Safety Code Sections 40000, 40702, and 42300 et seq.; Title 40 Code of Federal Regulations, Part 70.

The proposed amendments have met all legal noticing requirements and have been discussed with all interested parties. District staff recommends adoption of

the proposed amendments to Regulation 2, Rule 6, Major Facility Review, and to the Manual of Procedures, Volume II, Part 3, Major Facility Review Requirements.

## **RULE DEVELOPMENT HISTORY**

Regulation 2, Rule 6, was last amended on October 20, 1999. The purpose of the last amendment was to address the status of smaller facilities and to correct some of the interim approval issues.

A copy of proposed changes was sent to EPA, Region IX, on November 30, 2000. EPA's comments were received by the District on December 7, 2000. A copy of EPA's comments is contained in the rule development files.

Informal comments were also received from the California Air Resources Board (ARB).

Changes were made in response to comments from EPA, ARB, industry, the public, and internal District staff comments. A workshop notice was published on November 20, 2000, announcing a public workshop on December 20, 2000. Copies of the proposed rules and MOP chapter were available on the District's website.

A second workshop notice was published on January 3, 2001, announcing a second public workshop on January 22, 2001. Copies of the new proposed rules and MOP chapter were available on the District's website.

The notice for the hearing to adopt the amendments was published on April 2, 2001, in anticipation of a Board meeting on May 2, 2001.

## **WORKSHOP COMMENTS**

A public workshop to discuss and take comment on the rule revisions was held on December 20, 2000. Staff reviewed the rule with members of the public who attended the workshop.

Most of the discussion centered on the following topics:

1. The consequences of not receiving full approval
  2. The agricultural exemption
  3. Compliance audits
- The District introduced a proposal for compliance audits. Following is the proposed language:

2-6-426.1 Effective January 1, 2003, all compliance certifications shall be based on an audit of the facility or source that is either conducted or supervised, or the auditing procedure was reviewed by either a Qualified Environmental Professional certified by the Institute of Professional Environmental Practice or an engineer possessing an active air pollution specialty certification from the American Academy of Environmental Engineers, or the permit holder has a certified environmental management system that conforms to the Environmental Management System Standard, ISO 14001, 1996. The ISO certification must be granted by an auditor accredited by the American National Standards Institute (ANSI-RAB).

Industry opposed the above language because they felt that the cost of implementation was too great. However, the staff has serious concerns about the quality of compliance certifications conducted by some Title V facilities. The District felt that compliance audits that were prepared or reviewed by a qualified individual would assist the responsible official to ensure that the compliance certifications were true, accurate, and complete. The District has agreed to remove the language in this revision. The District will monitor the compliance certifications and revisit this section in the future.

4. Program suspension

ARB's proposed language for rule suspension was introduced at the December workshop. The language would have suspended the rule if EPA administered a Part 71 program in the Bay Area. ARB later discovered problems in the language and withdrew the suggestion. The Bay Area has decided not to suspend the rule if the program is not approved by December 1, 2001. The District expects that the agricultural exemption issue will be resolved and that if the program is not approved, the period before full approval will be short. Moreover, based on the Attorney General's opinion of November 1993, the District has authority to carry out most of the functions of the Title V program. The major difference is that the District would not have authority to require EPA review of Major Facility Review permits.

A second public workshop to discuss and take comment on the rule revisions was held on January 22, 2001. Staff reviewed the rule with members of the public.

These were the main items discussed:

1. Agricultural Exemption
2. Rule suspension
3. Public participation

Questions were asked about the District's public notice requirements, public information, and public participation procedures. The District has not proposed to modify the public participation procedures at this time. The rule requirements conform to the public participation procedures that are required by Part 70.

4. District procedures

Questions were asked about the District's procedures for receiving, reviewing, noticing, and issuing permits.

## COMMENTS AND RESPONSES

Written comments:

ARB comments: The following informal comments were received from ARB.

ARB Comment #1:

"1) Section 2-6-211 - Typo

Since Subsection 211.4 has been deleted, we recommend that the District change Subsection 211.5 to 211.4."

Response to ARB comment #1:

The District concurs and has made the change.

ARB Comment #2:

"Section 2-6-217.3

Contrary to 40 CFR Part 72 Acid Rain Program requirements, the phrase 'no more than 20 percent' in Section 217.3 would exempt a solid waste incinerator if fossil fuel combustion accounts for up to 20 percent of total energy input in a calendar year. We recommend that the District change Section 217.3 to read: 'A solid waste incinerator that burns fossil fuels for less than 20 percent (on a BTU basis) of the total energy input during any calendar year; or ...' "

Response to ARB Comment #2:

The District concurs and has made the change.

ARB Comment #3:

"Sections 2-6-313 and 2-6-314

The additional provisions for APCO denial and revocation of Title V permits appear to be within the authority of the District. We have no comment regarding these provisions."

Response to ARB Comment #3:  
The District concurs with ARB's position on this issue.

ARB Comments #4:

"Section 2-6-409.9

We agree that the Section 2-6-409.9 provision that simply requires 'A statement of compliance' as part of the permit is inappropriate if, by that requirement, the District intends to attest to the facility's compliance status with regard to each of its applicable requirements. We note that U.S. EPA IX's Title V Permit Review Guidelines (September 1999) Checklist for Review of Required Conditions in Title V Permits (Page III-40-44) does not indicate that U.S. EPA IX expects to see a report on compliance in the text of the permit. However, the Checklist does require a condition that the source comply with all applicable requirements, including any that may take effect within the five-year permit term."

Response to ARB Comment #4:  
The District concurs with ARB's position on this issue.

ARB Comment #5:

"Section 2-6-409.20

Section 409.20 could be interpreted to indicate that a third party without affiliation to the Title V facility (e.g., an independent laboratory where samples are sent for analysis) could 'certify' documents (e.g., monitoring reports) for the purposes of Title V. In the past, when confronted with similar situations where a Title V facility's work is contracted out, the U.S. EPA IX has indicated that the liability for the contracted work or the results of such work resides with the facility because the facility chooses the contractor. Therefore, a contractor may certify to work or results; however, his or her certification can not stand in lieu of the Title V facility's responsible official certification. To clarify that the Title V facility has the ultimate responsibility for any contracted work or results, we recommend that the District change the last sentence in Section 2-6-409.20 to read: ~~The~~All certifications shall be signed by a responsible official for the facility."

Response to ARB Comment #5:  
EPA has commented that the program cannot be approved if the rule includes this provision. The District has deleted the provision.

ARB Comment #6

"Section 2-6-411

The District's proposed revisions to 2-6-411 would delete the requirement that the District transmit Title V permit applications or application summaries to U.S. EPA IX. In the U.S. EPA IX's Title V Permit Review Guidelines (September 1999), Appendix B, 'CAPCOA Title V Attachment,' the U.S. EPA IX requires that a complete Title V submittal (at least for initial permits) include a copy of the application. Therefore, we recommend that the District restore the words

‘application or application summary’ in Section 2-6-411, unless provision for application transmittal to U.S. EPA IX has already been made elsewhere in Regulation 2, Rule 6.”

Response to ARB Comment #6:

The District has amended Section 2-6-405 to require facilities to send applications and all subsequent documents to EPA directly as allowed by 40 CFR 70.8(a), so no change to the language in Section 2-6-411 is necessary.

ARB Comment #7

“Insignificant Activities

We understand that the identification and justification of Title V insignificant activities is an outstanding Title V program deficiency for BAAQMD and most other California air districts. The proposed revisions to Regulation 2, Rule 6, do not appear to address insignificant activities. Since the insignificant activities issue must be resolved in order to receive complete District Title V program approval, we recommend that BAAQMD consider the insignificant activity options proposed in the ARB-U.S. EPA IX ‘Draft Summary of Title V Interim Approval Issues’ (September 2000). Otherwise, the District should plan to explore an alternative insignificant activities agreement with U.S. EPA IX.”

Response to ARB Comment #7:

The District requires a listing of all sources in the permit application (Section 2-6-405.4), whether significant or insignificant. In addition, we have expanded the requirement for emission calculations in Section 2-6-405.6 to require calculations of emissions from all sources that have significant emissions, even those that are exempt from District permits or excluded from District regulations. Of course, this requirement extends only to stationary sources.

ARB Comment #8:

“Title V Rule Suspension

If the State’s agricultural production source permit exemption is not changed to allow Title V permitting of major agricultural sources by December 1, 2001, U.S. EPA IX can not approve any district’s Title V program and the Agency [EPA] will be required to administer 40 CFR Part 71 in California. The District may want to consider inserting a paragraph in Regulation 2, Rule 6 which suspends the Rule in order to prevent simultaneous administration of Part 70 by the District and Part 71 by U.S. EPA IX. Such dual administration of Title V could complicate permit issuance and enforcement and cause unnecessary expense for the regulated community who would be required to pay Title V fees to both the District and U.S. EPA IX. We recommend that the District consider adding ARB-U.S. EPA IX Title V rule suspension language to Regulation 2, Rule 6 once it becomes available.”

**Response to ARB Comment #8:**

The District has decided to continue to implement its program even if District facilities are also subject to a Part 71 program. Most federally enforceable requirements in the Title V permits are District requirements or have been delegated to the District. The District is obligated to enforce these requirements in any case. The Attorney General's 1993 opinion regarding authority for the Title V program states that the districts have authority to impose the required monitoring, recordkeeping, reporting, and certification requirements.

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EPA comments: EPA sent the District two letters regarding approval issues. EPA's letter of August 11, 2000 was sent in response to the District's letter of July 7, 2000. The District's letter transmitted the draft rule and Manual of Procedures to EPA together with an analysis of the progress on each issue, a request for a determination of the status of each issue, and a request for identification of any new issues that might be a bar to full approval.

On December 6, 2000, EPA sent a response to proposed changes to Regulations 1, 2-1, 2-6, and Volume II, Part 3 of the Manual of Procedures. Following is a summary of the issues raised and the resolution on the program approval issues.

Many of the comments are concerned with issues raised by EPA Region IX in the notice of interim approval that was published in 1995. Comments 1 through 17 are interim approval issues and are contained in the federal register notice of June 23, 1995, granting interim approval to the District's Title V program. The portions in quotations come directly from the notice.

**Existing Interim Approval Issues**

**EPA Issue #1:**

"Provide a demonstration that each activity on Bay Area's insignificant activities list (See p. II-3 of program description, 2-6-405.4, and list in Appendix B.) is truly insignificant and is not likely to be subject to an applicable requirement. Alternatively, the District may establish emissions level cut-offs, in which activities emitting below the cut-offs would qualify as insignificant. In the latter case, the District must demonstrate that the cut-off emissions levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements. In addition, Bay Area must revise Regulation 2, Rule 6 to state that activities needed to

determine the applicability of, or impose applicable requirements on, the facility may not qualify as insignificant activities. (§§ 70.5(c) and 70.4(b)(2))”

Response to Issue #1:

The District had intended to provide a demonstration for each insignificant activity. However, in the interests of simplicity, the District has decided to rely on its requirement that all sources, permitted, exempt, or excluded, be listed in the permit application. In addition, the District has decided to require calculations of the emissions of any source that has emissions of more than 2 tons/yr of a regulated air pollutant or more than 400 lb/yr of any hazardous air pollutant.

EPA Issue #2:

“Include a term consistent with the part 70 definition of ‘applicable requirement,’ and use that term consistently in rules 2-6-409.1, 2-6-409.2 and throughout the regulation. As currently written, Bay Area’s regulation requires that ‘all federal . . . air quality requirements’ be incorporated into permits (2-6-409.1); yet, the term is never defined. Bay Area’s program does define ‘applicable requirement’ (2-6-202), but the definition deviates from the part 70 definition and includes non-federally enforceable District and State requirements. Bay Area’s definition of ‘federally enforceable’ (2-6-207) appears to address the federal definition of ‘applicable requirement’; however, it does not include the entire list of applicable requirements, and it is not clearly used in the permit content section of Regulation 2-6.”

Response to EPA Issue #2:

The District has added a reference to the definition in 40 CFR 70.2 to the definition of applicable requirements.

EPA Issue #3:

“Rule 2-6-409 must be revised to require that permit terms and conditions assure compliance with all applicable requirements (§ 70.7(a)(1)(iv)) and that permits contain emission limitations and standards (§ 70.6(a)(1)) and compliance certification requirements (§ 70.6(c)(1)) that assure compliance with all applicable requirements. As Regulation 2-6 is currently written, the District’s title V permits only have to include requirements for testing, monitoring, reporting, and recordkeeping sufficient to assure compliance with the terms and conditions of the permit and the applicable requirements themselves. (2-6-409.1 and 2-6-409.2)”

Response to EPA Issue #3:

EPA has stated in their letter of August 11, 2000, that the issue was resolved in the October 20, 1999 rulemaking.

EPA Issue #4:

“Require that certifications by the responsible official affirmatively state that they are based on truth, accuracy, and completeness and that they are based on information and belief formed after reasonable inquiry. Bay Area must revise 2-6-405.9, 2-6-502, MOP (4.5 and 4.7), and any other certification provisions to ensure that both elements are explicitly required. (§ 70.5(d))”

Response to EPA Issue #4:

EPA has stated in their letter of August 11, 2000, that the issue was resolved in the October 20, 1999 rulemaking.

EPA Issue #5:

“Revise Regulation 2-6 to define and require notice to, affected states. Alternatively, Bay Area may make a commitment to: 1) initiate rule revisions upon being notified by EPA of an application by an affected tribe for state status, and 2) provide affected state notice to tribes upon their filing for state status (i.e., prior to Bay Area's adopting affected state notice rules)”.

Response to EPA Issue #5:

A definition of affected state and a requirement to provide notice to affected states was added to the rule in the October 20, 1999 rulemaking. EPA's letter of August 11, 2000 stated that the following elements needed to be added: 1) the definition of “affected state” must include states that are contiguous to California, not just the District, 2) the rule must require written notification to EPA and affected states if a recommendation from an affected state is not accepted. These elements have been added to the rule.

EPA Issue #6:

“Eliminate the phrase ‘but not limited to’ from the definition of ‘administrative permit amendment’ (2-6-201). Only changes identified in the rule and approved as part of Bay Area's program may be processed as administrative amendments. (§ 70.7(d)(1)(vi))”

Response to EPA Issue #6:

EPA has stated in their letter of August 11, 2000, that the issue was resolved in the October 20, 1999 rulemaking.

EPA Issue #7:

“Revise 2-6-404.3 to limit the universe of significant permit modification applications due 12 months after commencing operations to only those applications for revisions pursuant to section 112(g) and title I, parts C and D of the Act that are not prohibited by an existing part 70 permit. Except in the above circumstances, a source is not allowed to operate the proposed change until the permitting authority has revised the source's part 70 permit. (§ 70.5(a)(1)(ii))”

Response to EPA Issue #7:

EPA has stated in their letter of August 11, 2000, that the issue was resolved in the October 20, 1999 rulemaking.

EPA Issue #8:

“In minor permit modification procedures, eliminate the extended review period (2-6-414.2) that is inconsistent with 2-6-410.2 and § 70.7(e)(2)(iv). This extension inappropriately lengthens the time that the source can operate under new conditions without a formal permit revision.”

Response to EPA Issue #8:

The correction will be made in this rulemaking.

EPA Issue #9:

“Revise 2-6-412.1 to include notice ‘by other means if necessary to assure adequate notice to the affected public.’ (§ 70.7(h)(1))”

Response to EPA Issue #9:

EPA has stated in their letter of August 11, 2000, that the issue was resolved in the October 20, 1999 rulemaking.

EPA Issue #10:

Add a provision to the Manual of Procedures (section 4.1) stating that only alternative emission control plans that have been approved into the SIP may be incorporated into the federally enforceable portion of the permit. (§ 70.6(a)(1)(iii))

Response to EPA Issue #10:

There is no general alternative emission control plan (AECP) provision in District rules, but rather there are AECP provisions in various source-specific rules. If an AECP has been approved into the SIP, it will be identified as federally enforceable in the permit.

EPA Issue #11:

“Add emissions trading provisions consistent with § 70.6(a)(10), which requires that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.”

Response to EPA Issue #11:

The proposal reinstates the emission trading provisions.

EPA Issue #12:

“Add a requirement to Regulation 2-6 that any document required by a part 70 permit must be certified by a responsible official. (§ 70.6(c)(1))”

Response to EPA Issue #12:

The District had proposed the following language:

“A certification requirement for all documents submitted pursuant to a major facility review permit. For applications, compliance certifications, and reports, 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. For documents which have been prepared by a third party not acting on behalf of the facility owner and/or operator, the certification shall state that based on information and belief formed after reasonable inquiry, the statements and information in the document are relevant and applicable to the issue for which such documents are submitted. The certifications shall be signed by a responsible official for the facility.”

EPA objected to the third sentence, but has found the rest of the section acceptable. The District will remove the third sentence and amend the section to say that all documents must be certified by a responsible official.

EPA Issue #13:

“Revise 2-6-224 and 2-6-409.10 to specify that all progress reports must include: 1) dates when activities, milestones, or compliance required in the schedule of compliance were achieved; and 2) an explanation of why any dates in the schedule of compliance were not or will not be met and any preventive or corrective measures adopted. (§ 70.6(c)(4)(i) and (ii))”

Response to EPA Issue #13:

Section 2-6-224 is a definition of schedule of compliance and will not be changed. Section 2-6-409.10 has been amplified to contain all of the necessary elements for the schedule of compliance.

EPA Issue #14:

“Revise section 4.5 of the MOP and add a provision to 2-6-409 to require that compliance certifications be submitted more frequently than annually if specified in an underlying applicable requirement. (§ 70.6(c)(4))”

Response to EPA Issue #14:

EPA has stated in their letter of August 11, 2000, that the issue was resolved in the October 20, 1999 rulemaking.

EPA Issue #15:

“Bay Area has indicated in its program description that it intends to process new units that do not affect any federally enforceable permit condition ‘off-permit’ (Section II, p.21 and Staff Report, pp. 3-4). However, Regulation 2-6 does not include any of the off-permit provisions required by §§ 70.4(b)(14) and (15). The

part 70 off-permit provisions provide several safeguards such as notice to EPA and recordkeeping requirements that must be incorporated into Bay Area's program. In order to receive full approval in this regard, Bay Area may submit a letter revising its program description to indicate that it will not process new units 'off-permit' or it may revise its rule to include the part 70 off-permit provisions."

**Response to EPA Issue #15:**

The District has decided not to process new units that do not affect any federally enforceable permit condition "off-permit." The District will submit a statement with its revised program submittal to this effect.

Sections 70.4(b)(14) and (15) would allow facilities to make changes that are not addressed or prohibited by the permit without modifying the permit. The District has concluded that these off-permit changes would be incompatible with the preconstruction review requirements contained in Regulation 2, Rules 1 and 2.

**EPA Issue #16:**

"Revise 2-6-222 defining 'regulated air pollutant' to be consistent with the federal definition (§ 70.2) and include pollutants subject to any requirement established under section 112 of the Act, including sections 112(g), (j), and (r)."

**Response to EPA Issue #16:**

The District is making the change as requested.

**EPA Issue #17:**

"In addition to the District-specific issues arising from Bay Area's program submittal and locally adopted regulations, California state law currently exempts agricultural production sources from permit requirements. In order for this program to receive full approval (and avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit."

**Response to EPA Issue #17:**

The District cannot resolve the issue of the agricultural exemption. This issue must be resolved by changes to state law. However, the District can remove any additional impediments to the permitting of agricultural sources in the Bay Area. Therefore, the District is making minor changes to Regulation 1, Section 110, and Regulation 2, Rule 2, Section 113.1.2 so that if state law changes, the Bay Area will be able to issue Title V permits to agricultural sources.

**New Issues identified by EPA in their letter of August 11, 2000**

EPA Comment #18:

“The definition of ‘federally enforceable’ states that ‘any permit term or condition that has been approved pursuant to a District rule or requirement that is not in the SIP is not federally enforceable.’ This addition to the District rule is inconsistent with EPA regulations and policy. EPA’s position on federal enforceability was stated very clearly in a letter to STAPPA/ALAPCO dated May 20, 1999.”

Response to EPA Comment #18:

The District and STAPPA/ALAPCO do not agree with EPA’s position on this issue and believe that EPA lacks authority to require changes on the basis of EPA “policy” and “positions” not embodied in duly adopted regulations. Nonetheless, the District will make the change, under protest, in the interest of program approval.

EPA Comment #19:

“EPA had concerns with the changes to the definition of ‘Major Facility,’ especially a section that allowed a source with low actual emissions to be considered minor in spite of its potential to emit.”

Response to EPA Comment #19:

EPA has stated in their letter of August 11, 2000, that the issue was resolved in the October 20, 1999 rulemaking. This comment refers only to the general definition of major facility and not to the definition of synthetic minor facility.

EPA Comment #20:

“The definition of ‘Minor permit revision’ is not as comprehensive as the one in 70.7(e)(2), since it does not have a provision which disallows minor modifications which would violate an applicable requirement.”

Response to EPA Comment #20:

EPA has agreed in their letter of August 11, 2000, that this issue was resolved because the rule requires that permits must assure compliance with all applicable requirements.

EPA Comment #21:

“ ‘Actual emissions’ is defined as emissions from a facility ‘from any 12-month period.’ EPA requires that such a period be representative of the source’s operations and that it be from within the last 5 years. The SIP-approved Bay Area New Source Review rule has the 5-year requirement, so this rule should be changed for consistency.”

Response to EPA Comment #21:

EPA has agreed in their letter of August 11, 2000, that the purpose of this definition is different than the definition for New Source Review purposes and that no revision is necessary.

EPA Comment #22:

“The definition of ‘SIP’ does not state that the plan must have been approved by EPA to be considered part of the SIP.”

Response to EPA Comment #22:

EPA has stated in their letter of August 11, 2000, that the issue was resolved in the October 20, 1999 rulemaking.

EPA Comment #23:

“Section 2-6-405.10 now says that ‘an application may reference, rather than explicitly list, certain pre-existing information and be considered initially complete.’ “ EPA expressed uncertainty regarding this provision.

Response to EPA Comment #23:

This provision is a response to EPA Title V White Paper #1, White Paper for Streamlined Development of Part 70 Permit Applications, Section 2.F.1, Cross-referencing. EPA has agreed in their letter of August 11, 2000, that this rule language is appropriate.

EPA Comment #24:

“Section 2-6-409.2.1 has been changed to say that a permit must include all applicable requirements for monitoring, recordkeeping, and reporting ‘unless these have been subsumed by the permit shield.’ “

Response to EPA Comment #24:

EPA objected to language that stated that the subsumed applicable requirements did not apply. The rule has been changed to remove the above language from Section 2-6-409.2.1. The permit shield definition, 2-6-233, has been modified to make it clear that monitoring, recordkeeping, and reporting can be subsumed when other applicable requirements for monitoring, recordkeeping, and reporting in the permit will assure compliance with all emission limits.

EPA Comment #25:

“Section 2-6-409.2.2 now states that, in addition to the monitoring required by existing applicable requirements, additional monitoring sufficient to ensure compliance must be included in the permit ‘unless the District decides it is not necessary due to low probability of noncompliance or because the unit is insignificant.’ Monitoring decisions are made on a case-by-case basis, and

general language like this should not interfere with the requirement for a permit to contain adequate monitoring to assure compliance.”

Response to EPA Comment #25:

The District concurs that monitoring decisions are made on a case-by-case basis and will remove the language.

EPA Comment #26:

“Section 2-6416 now allows the District to issue a permit for a term shorter than 5 years if the applicant requests it. This is acceptable for all sources except affected sources (i.e., sources subject to the acid rain requirements of Title IV), which must receive permits of a fixed term of 5 years, as per 70.6(a)(2).”

Response to EPA Comment #26:

The District has added language stipulating that permits for acid rain sources will have a term of 5 years.

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Comments from Chevron, Equilon, TOSCO, Ultramar, and Valero companies:

The District had proposed to incorporate the following language into the rule:

2-6-426.1: Effective January 1, 2003, all compliance certifications shall be based on an audit of the facility or source that is either conducted or supervised, or the auditing procedure was reviewed by either a Qualified Environmental Professional certified by the Institute of Professional Environmental Practice or an engineer possessing an active air pollution specialty certification from the American Academy of Environmental Engineers, or the permit holder has a certified environmental management system that conforms to the Environmental Management System Standard, ISO 14001, 1996. The ISO certification must be granted by an auditor accredited by the American National Standards Institute (ANSI-RAB).

The commentors felt that the compliance certification requirements in Part 70 as incorporated in the District’s rules were sufficient, and that it would be an unnecessary administrative burden to require the certification to be based on a compliance audit by a Qualified Environmental Professional or engineer possessing an active air pollution specialty certification from the American Academy of Environmental Engineers or an ISO approved program. They also felt that it would detract from time better spent on determining compliance.

Response to comment from the refineries:

The District proposal was intended to assist facilities in preparing compliance certifications and in avoiding the consequences of non-compliance. The District acknowledges that this requirement is not contained in Part 70 and will remove this requirement from the current proposal. However, noting that some compliance certifications have been unacceptable, the District will monitor the quality of the compliance

certifications to determine whether a requirement for an audit by a Qualified Environmental Professional or other expert is useful at a later date.

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Comments from Sensient Technologies (Formerly Red Star Yeast/Universal Foods):

Sensient comment #1:

“Regulation 2-6-207: Currently, the Major Facility Review permits contain essentially two types of conditions: one type that is Federally Enforceable and a second type that is District-only enforceable. The proposed changes to the definition of ‘Federally Enforceable’ appear to require that all conditions in a MFR permit will be Federally Enforceable, i.e. it appears that second type of conditions (District-only Enforceable) will cease to exist in MFR permits. Is this what the District intended?”

“The inclusion of all applicable conditions (both Federally and District-only Enforceable) in the MFR permit has been helpful to Red Star. Neither 40 CFR Part 70 nor the federal Clean Air Act Title V prohibit the District from including District-only enforceable conditions in a MFR permit. Red Star urges the District to retain non-federally enforceable condition in the MFR permits.”

“If the intended effect of the proposed changes to 2-6-207 is to make all conditions in a MFR permit Federally Enforceable, Red Star urges the District to remove all District-only enforceable conditions from the MFR permits and include them only in District Permits to Operate issued under Regulation 2. To do otherwise would subject the regulated community to another layer of reporting and oversight.”

Response to Sensient comment #1:

The following language has been deleted at EPA’s insistence: “Any permit term or condition that has been established pursuant to a rule or requirement that is not in the SIP is not federally enforceable.” It is EPA’s contention that any permit condition that is contained in a permit because it was contained in an authority to construct is federally enforceable because the permitting program itself is in the SIP. The District has also included the permitting program into the SIP as one of the measures that the District is using to achieve attainment for ozone. This makes any permit conditions that control NOX and VOC federally enforceable.

Some permit conditions have been generated through other programs and are not automatically federally enforceable. The District may adopt a

separate permitting program for locally enforceable permit conditions in the future to resolve this problem.

Sensient comment #2:

“Regulation 2-6-405: (I) The District’s proposed changes to the requirements for a complete permit application significantly expand the data requirements. This is due to the proposed elimination of the condition to submit emissions information only for the pollutants for which the facility is considered a major source. The facilities will now have to submit emissions information on potentially hundreds of additional compounds even if they have extremely small emissions. Because there is no longer a qualifier, emissions of literally a few ounces of a material will now require quantification and reporting. This would be extremely burdensome to the regulated community.

(II) The relationship or difference between ‘permitted source,’ ‘significant source,’ ‘exempt source,’ and ‘source’ is not clear. For example, each ‘permitted source’ must be identified and described (405.4, 4.1). Each ‘exempt source’ must be identified (405.4, 4.2). Each ‘source’ must have its applicable rules and regulations listed (405.5). Each ‘significant source’ must have its emissions characterized (405.6).”

“Red Star suggests a simplified structure as follows:

Significant source: a source that has a potential to emit of more than 2 tons per year of any regulated air pollutant, or more than 400 lbs per year of any hazardous air pollutant. (Existing 2-6-239)

Insignificant source: a source that is not a significant source (new definition).

Exempt source: a significant source that is otherwise exempt from the requirement to obtain a permit or excluded from District rules or regulations under Regulation 2, Rule 1 (new definition).”

“The MFR permit application should then require that the following information be submitted:

*Exempt sources:* Identification of each exempt source and the citation of the section of the rule under which the source is exempted or excluded.

*Significant sources:* Identification and description of each significant source; identification of each rule and regulation applicable to each significant source; and characterization of each significant source’s emissions.

*Insignificant sources:* The District should have a checklist in the permit application where insignificant sources are identified.”

“If the District retains the proposed language, it will be confusing for regulated facilities to determine which sources to identify and in which manner. It will be especially burdensome for facilities to have to identify the applicable rules and regulations for insignificant sources of emissions as the proposed regulations now require (2-6-405.5).”

Response to Sensient comment #2:

The changes to Section 2-6-405.6 have been made in response to the “insignificant activities” issue, which is one of the interim approval issues. In the original program, the District submitted the list of exempt sources in Regulation 2, Rule 1 to EPA as the list of insignificant activities. EPA objected to this approach. In the Federal Register notice of June 23, 1995, EPA stated to make the list approvable, the District had to prepare a demonstration for each type of exempt source showing that the source was “truly insignificant and not likely to be subject to an applicable requirement.”

Since the universe of potential exemptions list is large and subject to change, the District is relying on the fact that all sources are listed in the application. The District has always required identification of applicable requirements for all sources, including exempt sources.

The revision of Section 2-6-405.6 expands the universe of sources for which emission calculations are required, now including exempt or excluded sources which have significant emissions and sources that emit significant amounts of HAPs which have not been regulated. This requirement should not be onerous because most of the common HAPs are already regulated and the few exempt sources that are likely to have emissions of regulated air pollutants over 2 tons are well characterized (small engines, boilers).

Sensient comment #3:

“Regulation 2-6-409: The District has proposed changes to 2-6-409.2.2 that could significantly expand the monitoring requirements for major facilities. Red Star is concerned that the District was pressured to adopt these changes to conform to US EPA’s September 15, 1998 periodic emission monitoring guidance. As EPA is aware, the US Court of Appeals for the District of Columbia Circuit set aside, in its entirety, EPA’s guidance document on the basis that EPA expanded the 40 CFR Part 70 regulations with required notice and comment (*Appalachian Power Co. v. EPA*, D.C. Cir., No. 98-1512, 4/14/00). The court rules that

‘State permitting authorities therefore may not, on the basis of EPA’s guidance...require in permits that the regulated source conduct more frequent monitoring of its emissions than that provided in the applicable state or federal standard.’ “

“The court stated that the only exception is if

‘that standard requires no periodic testing, specifies no frequency, or requires only a one-time test.’ “

“Therefore, Red Star feels that, if the District wishes to change 2-6-409, it should do so in accordance with the court’s ruling. Red Star suggests the following language:

~~Additional requirements for testing, monitoring, reporting and recordkeeping sufficient to assure compliance with the applicable requirements unless the APCO determines that additional monitoring is unnecessary due to the low probability of non-compliance or because the source is insignificant.~~ Where the applicable requirement does not require periodic monitoring or testing and the source is a significant source, the permit ~~shall~~ may contain periodic monitoring sufficient to yield reliable data from the relevant time periods that is representative of the source's compliance with the permit;”

“Based on the court’s ruling, EPA may not force the District to adopt any more onerous monitoring requirements than this.”

#### Response to Sensient comment #3

The language “Additional requirements for testing, monitoring, reporting and recordkeeping sufficient to assure compliance with the applicable requirements” is from Part 70.6(c)(i). The phrase “unless the APCO determines that additional monitoring is unnecessary due to the low probability of non-compliance or because the source is insignificant” was added in 1999. EPA believes that the program is not approvable with the added language, but states in their letter of December 6, 2000, that “ the requirement to include monitoring ‘sufficient to ensure compliance’ inherently provides some flexibility to either add monitoring or not as needed.”

The District agrees that EPA’s periodic monitoring guidance has been set aside.

Comment from Golden Gate University Environmental Law and Justice Clinic: The Law and Justice Clinic commented that Section 2-6-409.9 required that each permit contain “a statement of compliance.” The permits do not contain a statement of compliance. Instead, if the facility is understood to be in compliance, the permits contain the following schedule of compliance:

“The permit holder shall comply with all applicable requirements cited in this permit. The permit holder shall also comply with applicable requirements that become effective during the term of this permit.”

Response to comment from Golden Gate University Environmental Law and Justice Clinic:

The language in Section 2-6-409.9 originally came from ARB’s model rule, which was developed to assist the districts in California in developing their Title V, programs. Section 40 CFR Section 70.5 contains requirements for permit applications. Section 70.5(c)(8) contains a requirement for a statement of compliance in the permit application. 40 CFR Section 70.6 contains requirements for permit content. The compliance requirements in 40 CFR Section 70.6(c) refer back to 40 CFR Section 70.5(c)(8), but only in regards to the schedule of compliance, not the statement of compliance.

Since Part 70 does not require a statement of compliance in the permit, the District proposes to delete the statement of compliance in the rule and to amplify the schedule of compliance in the rule to show that the compliance schedule has three parts:

- 1) A statement that the facility will continue to comply with all requirements.
- 2) A statement that the facility will comply with all new requirements on a timely basis.
- 3) If the facility is out of compliance with a requirement, the schedule of compliance shall contain a plan by which the facility will achieve compliance.

Statements of compliance are the responsibility of the facility. Each facility will certify compliance in the permit application and annually after the permit is issued.

In response to another comment from the Clinic, all permits issued after February 6, 2001 have the following language: “The permit holder shall also comply with applicable requirements that become effective during the term of this permit on a timely basis.”

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**Verbal comment from a consultant:**

Section 2-6-411.3 states that minor revisions are subject to the provision that any person dissatisfied with the proposed terms and conditions may petition EPA to reconsider the matter. However, Part 70 does not subject minor revisions to these petitions.

Response to comment:

The District did not intend to subject minor revisions to this provision. It has been inadvertently included because the Section 2-6-411, Reports to EPA and Public Petitions for Major Facility Review Permits, also includes the provisions for EPA review. The District will correct the error.

The District will also make the following correction to 2-6-411.1: The subsection states that EPA has 45 days from receipt of a proposed permit to accept or object to them in writing. Part 70 does not oblige EPA to accept a permit in writing. If EPA does not object to a permit in writing within 45 days, the District is free to issue the permit. Therefore the words "accept or" have been deleted from this section.