



Major Facility Review Advisory #2

ADVISORY FOR REGULATION 2, RULE 6: MAJOR FACILITY REVIEW

IMPACTS OF EPA'S WHITE PAPER ON THE MFR PROGRAM

From: Peter Hess, Deputy Air Pollution Control Officer

EPA has issued a guidance memorandum entitled White Paper for Streamlined Development of Part 70 Permit Applications dated July 10, 1995. The document addresses implementation of Part 70 and is specifically intended to streamline the Part 70 permit applications. EPA has stated that this is the first in a series of policy statements discussing implementation concerns.

The White Paper addresses the minimum requirements for complete permit applications. A summary of the issues follows; EPA guidance statements are bulleted, and the effects on the District's Title V Program are italicized.

1. Required Emissions Information

Applications must contain information required to determine major source status, verify the applicability of Part 70 and other applicable requirements, verify compliance with applicable requirements, and compute permit fees.

- **If a unit is not subject to an emission rate or only is subject to a generic requirement, only a description of the type of emission (no quantification) is required.**

BAAQMD: Currently neither a description of emission type nor quantification of emissions is required for activities excluded under District Rule 1 or exempted from the requirement to obtain a District Permit to Operate under Rule 2-1 (prior to the 6-7-95 modifications), even if these activities are subject to an emission rate. For activities with emissions over the thresholds defined in Section 2-6-405.6 which are not exempt or excluded, quantification of emissions is required even if the activity is not subject to an emission standard.

This approach, based on levels of actual emissions, is less burdensome. In most cases, emission information already exists for the sources required to report emissions under Section 2-6-405.6.

- **For affected emission units, quantification of emissions is required in sufficient detail to determine permit fees.**

BAAQMD: This is not relevant for the District, since permit fees are based upon existing emission data.

- **The requirement to report emissions can be fulfilled by referencing another document, if available (recent emission inventory submittal).**

BAAQMD: This is consistent with the District program. Each Title V facility was supplied with a printout of its emission inventory based on the facility's annual usage reports. The facility has the option to return this inventory, intact or modified, to fulfill the emission calculation requirement.

- **For a regulated emission unit, emission quantification is required for each pollutant in units of “tons per year” and in terms consistent with an applicable test method.**
- **For a regulated emission unit, emission quantification is required for each pollutant in more detail to establish plantwide emission limits in the Part 70 permit, when granting a permit shield or non-applicability based on emissions, to determine major source status for a particular pollutant.**
- **Emission calculations can be based upon AP42, other EPA documents, or "reasonable projections or belief."**
- **Reported emissions do not become permit terms, unless required by or requested to avoid an applicable requirement.**
- **Reporting of emissions in more than one form (actual, potential, allowable) is unnecessary.**
- **Negative declarations of emissions are unnecessary.**

BAAQMD: This is all consistent with the District program.

2. Insignificant Activities

Information need not be included for insignificant activities unless it is necessary to identify an applicable requirement, determine compliance status, or determine whether the facility is major.

- **If an activity is designated insignificant based upon size or production rate, the application must list the activity in the permit application.**

BAAQMD: This is consistent with the District program, since any activity at the facility which is exempt under Rule 2-1 need only be listed in the application.

- **EPA has defined a new set of “trivial” activities considered to be even less significant than insignificant activities, which do not even need to be listed in the permit application. Examples were given in the White Paper, with the caution that District-specific factors (SIP requirements) may determine whether the sample activities could be included in the local list of "trivial" activities.**

BAAQMD: The District's program is more streamlined in that "insignificant" and "trivial" activity lists have not been added to the existing District permitting program. Information is required only for permitted sources, exempt sources as defined in Rule 2-1 prior to the 6-7-95 modifications, and activities with emissions over the thresholds in Section 2-6-405.6. Any activity not defined as permitted or exempt and that has emissions under the Section 2-6-405.6 thresholds is implicitly considered to be insignificant or trivial.

3. Generic Grouping of Emissions Units and Activities

This issue involves whether emission units and activities may be treated generically in the application for certain broadly applicable requirements that apply and are enforced identically to all emission units, such as opacity limits.

- **These requirements can be addressed with minimal or no reference to specific emission units or activities, if the applicant documents the applicability of the requirements and compliance status.**
- **The emission units/activities subject to a generic applicable requirement can be grouped together regardless of whether the activities are listed as trivial or insignificant, if the activities can be unambiguously defined and enforceability does not require specific listing of subject units.**

BAAQMD: Both are consistent with the District program. Applicants may even state that a broadly applicable requirement applies to an entire facility.

4. Short-term Activities

Short-term activities are defined as those activities occurring infrequently and for a short duration.

- **Short-term activities not subject to an applicable requirement should be classified as insignificant or trivial.**

BAAQMD: Again the District's Title V program does not include insignificant and trivial activity lists, but is based on the established District exemption list. Short-term activities qualifying for a Rule 2-1 exemption need only be listed. Of course, an applicant may choose to list known activities.

- **For those subject to an applicable requirement, the application should contain a general duty to meet all requirements.**
- **For frequently reoccurring activities, the permitting authority could require them to be included in the permit.**
- **A permit revision is required if operation of any short-term activity would be in conflict with the permit.**

BAAQMD: This is all consistent with the District program. Some short-term activities are required to obtain a District permit.

5. Determination of Applicable SIP requirements

- **EPA states that it may be difficult to identify all the requirements in the SIP, and a good faith estimate to include local and state rules that are in the SIP is adequate.**

BAAQMD: This is not an issue in the Bay Area. The SIP effective December, 1993, was furnished by EPA and is available through the District's Public Information & Education Division. The District's first Major Facility Review Advisory dated June 30, 1995, included a supplemental list of SIP approvals since December, 1993.

- **If review by the District, EPA, or the public identifies additional requirements, the application shield need not be affected as long as the applicant updates its certification to account for the newly identified requirements.**
- **Where a local rule is pending approval into the SIP, applications could note that the local requirement will become federally enforceable upon SIP approval.**

BAAQMD: Both are consistent with the District program.

6. Incorporation of Prior NSR Permit Terms and Conditions

Section 70.2 defines any term or condition of an NSR permit issued under a federal or SIP-approved NSR program as being an applicable requirement.

- **EPA has concluded that only environmentally significant terms need to be included in Part 70 permits. Major and minor NSR permit terms can be revised in conjunction with Part 70 permit issuance, and existing conditions that are “obsolete, extraneous, environmentally insignificant, or otherwise not required as part of the SIP or a federally enforceable NSR program” need not be included in the permit.**

BAAQMD: The District will accept applications that designate “environmentally insignificant” permit terms as not federally enforceable. Applicants may petition the District to remove obsolete or extraneous terms as part of the MFR permit issuance process. Applicants will be kept informed of any further guidance regarding this issue.

- **If the District wishes to extend the period for deciding whether to revise, delete, or designate non-federally enforceable terms of current permits, the initial Part 70 permits may stipulate that terms so listed will be reviewed on or before a deadline not later than permit renewal. Until that time, the designated terms would continue to be enforceable under state law, and a permit revision would be required to convert them to federally enforceable terms.**

BAAQMD: This is not explicitly discussed in the current District program. However, the District intends to use this flexibility as necessary.

- **In applications, facilities could propose permit terms which they believe should be considered for revision, deletion, or designation as non-federally enforceable. If the District decided additional terms should be incorporated into the federally enforceable portion of the permit, the District could amend the application and the facility would be required to re-certify with respect to those terms.**
- **The permitting authority may be required to add new terms to the Part 70 permit to make existing permit terms enforceable from a practical standpoint or to meet other Part 70 requirements regarding permit content.**

BAAQMD: Both are consistent with the District program.

7. Section 112(r) Requirements

- **Applicants merely need to acknowledge whether or not their facility will be required to submit a risk management plan, based on the "List of Regulated Substances and Their Thresholds" rule (59 FR 4478, January 14, 1994).**

BAAQMD: This is consistent with the District program.

- **Applicants are not required to quantify emissions of 112(r) substances, unless they are 112(b) pollutants.**

BAAQMD: This is currently consistent with the District program, since no standard has been promulgated for the 112(r) substances.

8. Research and Development Activities

The July 21, 1992 Part 70 preamble provided that R&D activities could often be regarded as "separate" sources from any co-located operation (57 FR 32264 and 32269).

- **If the activity is not individually major, not a support facility contributing to the product of a co-located major manufacturing facility, and not involved in environmental and quality assurance/quality control sample analysis, it is not subject to Part 70.**

BAAQMD: The District will use the latest R&D exemption levels to indicate which activities can be assumed to be non-major.

- **For subject activities, if there is no applicable SIP requirement, they should be eligible for treatment as an insignificant activity.**
- **If there are SIP requirements consisting of work practice standards, applications need only acknowledge the applicability of and compliance with the requirements. An extensive inventory of chemicals, activities, and emissions is not required.**

BAAQMD: Again, emissions are required only if the activity is a permitted source or if emissions exceed the thresholds in Section 2-6-405.6.

9. Applications from Non-major Sources

- **The application only needs to cover the emission unit or activity that caused the facility to be subject to Part 70, even if other emission units at the facility are subject to applicable requirements.**

BAAQMD: This is not relevant in the Bay Area, since non-major sources are not currently subject to the District's Major Facility Review Program.

10. Supporting Information

- **A majority of the background information used to prepare the application need not be included with the application for it to be deemed complete. The permitting authority can request additional, more detailed information.**
- **Examples of calculation methodology can be submitted, instead rows of identical calculations for each similar source.**

BAAQMD: Both are consistent with the District program.

11. Quality of Required Information

Where estimates of emissions are necessary, reasonably available information may be used.

- **Emission calculations can be based on emission factors from AP42 and other EPA, state, or local documents.**
- **If the use of emission factors is not appropriate, other estimation methods such as a material balance, source test, CEM data are also acceptable. The applicant may also choose an alternate method when the data obtained is more accurate than using emission factors.**
- **Emission estimates must be expressed in terms consistent with the applicable requirement for certification purposes. Available test data or other data using the same averaging times and units is acceptable.**

BAAQMD: These options are all consistent with the District program.

- **The need for quantification/estimation decreases with the level of emissions present. For instance, if an MSDS indicates trace amounts of HAPs, the application can state that the HAPs are present in trace amounts without performing testing or further quantification.**

BAAQMD: This is also consistent with the District program. Section 2-6-405.6 states for each emission unit for which emission reporting is required, only regulated air pollutant emissions equal to or greater than 2 tpy must be reported; for each HAP for which the facility is major, only amounts equal to or greater than 1,000 lb/yr must be reported.

12. Phase-In of Details for Completeness Determinations

The July 21, 1992 preamble and Section 70.5(c) identify the requirements for complete applications.

- **The two step process for completeness determinations consists of an administrative determination (if the application is complete enough to begin processing - defines the applicable requirements, major/minor source status, states compliance/non-compliance, and is certified) followed by application updates as needed to draft permits.**

BAAQMD: This is consistent with the District program.

13. Updates to Initially Complete Applications Due to Change

To maintain an application's status as complete, and preserve the application shield, the applicant must respond to requests for additional information, by prompt submittal or revision of the requested information including certification.

- **Updates to a complete application are required for new NSR projects, changes at the facility, or development of new emission information that affects applicable requirements or compliance status. Information regarding changes that do not affect applicable requirements or compliance status is not required until permit renewal.**
- **If the new information is discovered prior to permit issuance, the information should be submitted as an addendum to the application.**
- **If the information is discovered after permit issuance, the applicant must apply for a permit revision or reopening. Changes causing non-compliance with the permit must be processed as a permit revision.**

BAAQMD: This is all consistent with the District program.

14. Content Streamlining

- **EPA has asked permitting agencies to re-examine permit application forms in light of this guidance.**

BAAQMD: The District plans to modify the permit application forms but does not expect to do so prior to receiving the initial MFR permit applications. If the forms request information not required according to the guidance in this advisory, the terms of this advisory take precedence.

- **Cross referencing other documents is acceptable if the materials referenced are available to the public and the manner of application is not subject to interpretation. The citation must be clear with respect to limits and other requirements that apply to each subject emission unit. The accuracy of description of the referenced documents is subject to the certification requirements.**
- **Cross referencing materials elsewhere in the application is acceptable.**

- **Citing NSR terms is acceptable, even when the application is proposing some of the terms as not federally enforceable, as long as the identification of the federally enforceable terms is clear. All terms remain in effect.**

BAAQMD: This is all consistent with the District program. The following are types of information which may be referenced:

- a. Rules, regulations, and published protocols*
- b. Criteria pollutant and HAP emission inventories and supporting calculations, such as the inventories sent to the Title V facilities*
- c. Source-specific emission monitoring reports, compliance reports, and source tests*
- d. Annual emission statements, if a copy is also sent*
- e. Process and abatement equipment lists and descriptions*
- f. Current permit terms and conditions*
- g. Permit application materials previously submitted, such as data forms*
- h. District's engineering analyses*

15. Responsible Official

Concerns have been raised over the narrowness of the definition of "responsible official." In particular with respect to partnerships and partnerships of corporations, the definition can be interpreted to limit the potential candidates for responsible official to general partners.

- **In partnerships, EPA has allowed the same flexibility in designating the responsible official as would be the case for corporations ... "a president, secretary, treasurer, or vice president or *any other person who performs similar policy or decision-making functions.*" The persons with the knowledge and authority to assure regulatory compliance are the officials of the partnership.**

BAAQMD: The District intends to follow this guidance.

16. Compliance Certification Issues

To certify compliance, applicants must review current major and minor NSR permits and other permits containing federal requirements, the SIP, and other documents.

- **Applicants are not required to reconsider previous applicability determinations.**
- **Companies must rectify past noncompliance as it is discovered and remain subject potential to enforcement actions for past noncompliance.**
- **The permit shield is not available for noncompliance occurring prior to, or continuing after, application submittal.**

BAAQMD: This is all consistent with the District program.

INTEROFFICE MEMORANDUM

October 12, 1995

To: Pete Hess
From: Janet Stromberg
Subject: Major Facility Review Second Implementation Advisory

Attached for your signature is the second Major Facility Review Advisory. This document discusses the impacts of EPA's July 10, 1995 White Paper on the District's Major Facility Review Program. We intend to use this document as a handout for tomorrow's Study Session and will also be distributing copies to all interested parties on the Title V mailing list.