f. Applicability

EPA found during its review of the San Diego title V program that the District's applicability provisions are consistent with part 70 and fully approvable, but that there is atypical language which warrants a brief discussion in this notice. First, the requirement to count fugitive hazardous air pollutant emissions in major source determinations is contained in the definition of "potential to emit" rather than the definition of "major stationary source." The term "potential to emit" is used to define "major stationary source." (See Regulation XIV, Rules 1401(c)(25) and (36).)

Second, a broad applicability exemption for all non-major stationary sources (Rule 1401(b)(1)) appears at first glance to be in conflict with the part 70 requirement to permit non-major affected sources and solid waste incineration units subject to section 129(e) of the Act (section 70.3(b)). However, San Diego's regulation provides that the applicability exemptions in Rule 1401(b)(1) apply only when referenced in the applicability section (Rule 1401(a)(2) and (3)); i.e., to non-major sources subject to sections 111 or 112 of the Act. (See Regulation XIV, Rule 1401(a)(2-4).) San Diego's program description confirms this reading (section III.B.1.b., p.2). In any case, if EPA completes a rulemaking that would require a nonmajor source to obtain a title V permit, the non-major stationary source exemption would not apply for that source (Rule 1401(b)(1)).

g. Federally Mandated New Source Review

In order to have an approvable title V program, permits must assure compliance with all federal applicable requirements. The part 70 definition of "applicable requirement" includes "any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;" (section 70.2, definition of "applicable requirement," subsection (2)) i.e., major and minor new source review and prevention of significant deterioration requirements.

Rather than citing parts C or D of title I, San Diego's definition of "federally enforceable requirement" states that requirements imposed by "federally mandated new source review" or prevention of significant deterioration regulations are applicable requirements. The use of the term "federally mandated new source review" is unclear. Under

San Diego's definition, "federally mandated new source review" is linked to "emission thresholds specified in federal law or in the approved State Implementation Plan (SIP)." (See Regulation XIV, Rule 1401(c)(19).) The District has a SIP-approved minor new source review program that is triggered by any emissions increase, which could be construed as an emissions threshold of zero, and therefore all NSR, major and minor, is federally mandated. (See Regulation II, Rule 10(a).) Yet, San Diego has contended that minor NSR is not always federally mandated, leaving the term "federally mandated new source review" subject to conflicting interpretations.

The District must revise either the definition of "federally mandated new source review" or the definition of "federally enforceable requirement" to clearly include minor new source review as an applicable requirement under title V. However, San Diego's program is approvable for an interim period because the District's approved SIP contains a minor new source review program, and San Diego's definition of "federally enforceable requirement" also includes "[a]ny standard or other requirement provided for in the State Implementation Plan" (Regulation XIV, Rule 1401(c)(18)(i)). Rules 10 and 21 of San Diego's portion of the California SIP constitute the District's minor (and major) NSR program. (See June 22, 1994 letter from Richard Smith, San Diego Air Pollution Control District, to Ron Friesen, California Air Resources Board.) Since Rules 10 and 21 are in San Diego's SIP, the requirement to obtain, and the specific conditions of, a minor NSR permit are federally enforceable.

EPA has discussed this interim approach with San Diego, and the District agrees that SIP-approved Rules 10 and 21 provide for a federally enforceable minor NSR program. However, EPA and San Diego disagree about whether Rule 21 extends federal enforceability to all terms and conditions of minor NSR permits. EPA believes that, until San Diego's SIP is revised to state otherwise, Rule 21 makes all terms and conditions of minor NSR permits federally enforceable. San Diego believes that minor NSR permit terms that do not originate from the SIP or other federal law or regulations are not made federally enforceable by Rule 21. As an interim solution until San Diego's SIP is revised or this disagreement is resolved, the District has agreed to designate in the part 70 permit certain minor NSR permit terms as "District-only minor NSR" and stipulate that those terms so listed will be reviewed and, as necessary, be

deleted, revised, or incorporated as federally-enforceable terms of the part 70 permit on or before a specified deadline (not later than the renewal of the permit).

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed \$25 per ton per year (adjusted annually based on the Consumer Price Index (CPI), relative to 1989 CPI). The \$25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum" (40 CFR 70.9(b)(2)(i)).

San Diego has opted to make a presumptive minimum fee demonstration. The District's fees are based on the actual direct and indirect costs of evaluating and issuing a title V permit. In addition to employing a cost recovery approach, the District will charge an initial title V permit application fee of \$2,200 per permitted source (Rule 40, Section (s)). San Diego estimates an average implementation cost, and hence fees, of \$320,000 per year for the first 5 years of the program. The presumptive minimum is calculated at \$309,300 per year by multiplying an estimated 10,000 tons of pollutants emitted each year in San Diego by the CPI adjusted presumptive dollar amount of \$30.93. San Diego will therefore be collecting fees in an amount that exceeds the presumptive minimum.

- 4. Provisions Implementing the Requirements of Other Titles of the Act
- a. Authority and Commitments for Section 112 Implementation

San Diego has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining federal "applicable requirements" and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. EPA has determined that this legal authority is sufficient to allow San Diego to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the TSD accompanying