

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Revise § 3.750 to read as follows:

**§ 3.750 Entitlement to concurrent receipt of military retired pay and disability compensation.**

(a) *Definition of military retired pay.* For the purposes of this part, military retired pay is payment received by a veteran that is classified as retired pay by the Service Department, including retainer pay, based on the recipient's service as a member of the Armed Forces or as a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration.

(b) *Payment of both military retired pay and disability compensation or improved pension—(1) Compensation.* Subject to paragraphs (b)(2) and (b)(3) of this section, a veteran who is entitled to military retired pay and disability compensation for a service-connected disability rated 50 percent or more, or a combination of service-connected disabilities rated at 50 percent or more, under the schedule for rating disabilities (38 CFR part 4, subpart B), or based on a determination of individual unemployability under 38 CFR 4.16, is entitled to receive both payments subject to the phase-in period described in paragraph (c) of this section.

(2) *Chapter 61 disability retirees retiring with 20 or more years of service.* Disability retired pay payable under 10 U.S.C. Chapter 61 to a veteran with 20 or more years of creditable service may be paid concurrently with disability compensation to a qualifying veteran subject to the following:

(i) Any waiver required during the phase-in period under paragraph (c)(1)(ii) of this section; and

(ii) If the veteran's disability retired pay exceeds the amount of retired pay the veteran would have received had the veteran retired based on length of service, the veteran must waive that excess amount of disability retired pay in order to receive VA disability compensation.

(3) *Chapter 61 disability retirees retiring with less than 20 years of service.* Veterans who receive disability retired pay under 10 U.S.C. Chapter 61 with less than 20 years of creditable service are not eligible for concurrent receipt.

(4) *Improved Pension.* A veteran may receive improved pension and military retired pay at the same time without having to waive military retired pay. However, in determining entitlement to improved pension, VA will treat

military retired pay in the same manner as countable income from other sources.

(c) *Waiver—(1) When a waiver is necessary.* (i) A waiver of military retired pay is necessary in order to receive disability compensation when a veteran is eligible for both military retired pay and disability compensation but is not eligible under paragraphs (b)(1) or (b)(2) of this section to receive both benefits at the same time.

(ii) All veterans who are eligible to receive both military retired pay and disability compensation at the same time under paragraphs (b)(1) or (b)(2) of this section, except those receiving compensation for a disability rated 100 percent, must file a waiver in order to receive the maximum allowable amount of disability compensation during the phase-in period. For veterans receiving disability compensation based on a VA determination of individual unemployability, the phase-in period ends on December 30, 2009. For all other veterans, the phase-in period ends on December 31, 2013. After the phase-in period, veterans retired under 10 U.S.C. chapter 61 who are eligible for concurrent receipt must still file a waiver under the circumstances described in paragraph (b)(2)(ii) of this section.

(Authority: 10 U.S.C. 1414, 38 U.S.C. 5304, 5305)

(2) *How to file a waiver of military retired pay.* A veteran may request a waiver of military retired pay in any written, signed statement, including a VA form, which reflects a desire to waive all or some military retired pay. The statement must be submitted to VA or to the Federal agency that pays the veteran's military retired pay. VA will treat as a waiver an application for VA compensation filed by a veteran who is entitled to military retired pay.

(d) *Elections and the right to reelect either benefit.* (1) A veteran who has filed a waiver of military retired pay under this section has elected to receive disability compensation. A veteran may reelect between benefits covered by this section at any time by submitting a written, signed statement to VA or to the Federal agency that pays the veteran's military retired pay.

(2) An election filed within 1 year from the date of notification of Department of Veterans Affairs entitlement will be considered as "timely filed" for effective date purposes. See § 3.401(e)(1). If the veteran is incompetent, the 1-year period will begin on the date that notification is sent to the next friend or fiduciary. In initial determinations, elections may be applied retroactively if

the claimant was not advised of his or her right of election and its effect.

(Authority: 38 U.S.C. 5304(a), 5305)

[FR Doc. E6-19603 Filed 11-17-06; 8:45 am]

BILLING CODE 8320-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[AZ-06-01; FRL-8243-8]

### Notice of Resolution of Notice of Deficiency for Clean Air Operating Permits Program; Maricopa County, AZ

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of resolution.

**SUMMARY:** EPA issued a notice of deficiency on May 17, 2005, in which EPA identified problems with Maricopa County's Clean Air Act title V operating permits program and a timeframe for the County to correct these deficiencies. The Maricopa County Air Quality Department submitted corrections to its permit program in quarterly updates beginning in February 2006 and in a final submittal dated October 20, 2006. This notice announces that, based on information provided by Maricopa County Air Quality Department, EPA concludes that Maricopa County has resolved all of the issues identified in the May 17, 2005 Notice of Deficiency. As a result, EPA will not impose sanctions set forth under the mandatory sanctions provisions of the Clean Air Act. In addition, EPA will not promulgate, administer, and enforce a whole or partial operating permit program pursuant to the title V regulations of the Clean Air Act within two years after the date of the finding of deficiency.

**DATES:** *Effective Date:* November 9, 2006. Because this Notice of Deficiency is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

**FOR FURTHER INFORMATION CONTACT:** Anna Yen, EPA, Region 9, Air Division (AIR-3), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3976, or [r9airpermits@epa.gov](mailto:r9airpermits@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

#### Table of Contents

- I. Background
- II. Maricopa County's Submittal and EPA's Determination
- III. EPA's Action

## IV. Administrative Requirements

## I. Background

On May 17, 2005, EPA issued a notice of deficiency (NOD) for the title V operating permits program in Maricopa County, Arizona. (70 FR 32243, June 2, 2005). The NOD was based upon EPA's findings that the County's title V program did not comply with the requirements of the Clean Air Act (CAA or Act) or with the implementing regulations at 40 CFR part 70. The deficiencies EPA found were in two main categories: (1) Permit fees and (2) permit processing.

Maricopa County was required to address these deficiencies within 18 months of the effective date of the NOD, or the County would be subject to the sanctions under 40 CFR 70.10(b)(3) and section 179(b) of the Act. In addition, 40 CFR 70.10(b)(4) provides that, if the permitting authority has not corrected the deficiency within 18 months of the date of the finding of deficiency, EPA will promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

Region 9 performed a title V program evaluation of Maricopa County Environmental Services Department (MCESD) beginning May 27, 2004. On May 18, 2005, Region 9 issued the final program evaluation report<sup>1</sup> to MCESD. The deficiencies identified in the NOD are a subset of the findings described in the program evaluation report. While the program evaluation report was still being finalized, Maricopa County initiated a number of changes. In November of 2004, Maricopa County created a new Air Quality Department, separate from MCESD. In addition, Maricopa County filled two key management positions in the Maricopa County Air Quality Department (MCAQD): Department Director and Permit Engineering Division Manager. In March 2005, Robert Kard was hired as the new Department Director. In April 2005, Kathlene Graf was promoted to the position of Permit Engineering Division Manager.<sup>2</sup> With the reorganization and new management, Maricopa County has implemented or begun to implement many improvements to its title V program, in terms of both accepted practices and formalized procedures.

<sup>1</sup> The report titled "Maricopa County Environmental Services Department Title V Operating Permit Program Evaluation," is available at <http://www.epa.gov/region09/air/titlevevals.html>.

<sup>2</sup> MCAQD has nine divisions, one of which is the Permit Engineering Division.

## II. Maricopa County's Submittal and EPA's Determination

On August 15, 2005, Maricopa County Air Quality Department (MCAQD) submitted a corrective action plan entitled "Response to EPA Notice of Deficiency & Title V Audit" to EPA. In the plan, MCAQD responded to each deficiency noted in the May 17, 2005 NOD and to each finding in EPA's title V program evaluation report by proposing a correction for each deficiency and an action to address each EPA finding. The submittal also included a timeline that showed milestones and dates for completion of each milestone.

Beginning in February 2006, Maricopa County Air Quality Department (MCAQD) submitted quarterly updates to EPA to show its progress in correcting the deficiencies noted in the NOD and in addressing the findings of the title V program evaluation report. The submittals included numerous attachments, many of which were new policy documents, guidance documents, and standard operating procedures. On October 23, 2006, EPA received MCAQD's submittal, the "Response to the Notice of Deficiency," (NOD Response), dated October 20, 2006. The NOD Response is available to view in the docket, Docket ID No. AZ-Maricopa-06-1-OPS. In the NOD Response, and the preceding quarterly updates, MCAQD explained and documented how each of the deficiencies identified in the NOD had been, or were being, addressed. The NOD Response contains documented internal organizational and operational changes within MCAQD, an interim guidance document for title V permit revisions, a copy of the revised fee rule and new delinquent fee policy, a fee demonstration, a description of the improved accounting system, a workload assessment for title V, and other supporting attachments.

This notice focuses only on MCAQD's responses to correct the deficiencies identified in the NOD. Based on the information in MCAQD's NOD Response, and the preceding quarterly updates, EPA has determined that MCAQD has demonstrated that it has resolved each of the issues listed in the May 17, 2005 NOD, as discussed below.

## A. Permit Fees

## 1. Demonstration of Sufficient Fees To Cover Program Costs and That Fees Are Used Solely for Title V

## a. Fee Demonstration

Pursuant to 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(a), a permitting authority's

title V program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs. 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b) provide that a permitting authority may collect fees that cover the actual permit program costs, or may use a presumptive fee schedule, adjusted for inflation.

Maricopa County's permit fee structure is a combination of an application fee, hourly-based processing fee, annual administrative fee, and annual emissions-based fee. The emissions-based fee is less than EPA's presumptive minimum, and, since other components of the permit fees are not assessed on a per-ton basis, it was difficult to determine if the aggregate of the fees met the presumptive minimum. In addition, though Maricopa County was able to account for title V revenues quite accurately, it did not have a clear accounting of its costs incurred under title V. Therefore, Maricopa County was not able to demonstrate that title V permit fees collected were sufficient to fund its title V program.

To address this issue, MCAQD provided a fee demonstration to show that the aggregate of its title V fees is equivalent to a fee greater than the presumptive minimum, as allowed by 40 CFR 70.9(b)(2)(i). MCAQD charges a dollar-per-ton emissions-based fee for actual emissions of all regulated pollutants emitted during the previous calendar year. Therefore, the fee demonstration includes fiscal year 2006 (July 2005 through June 2006) title V revenue, the total reported emissions of regulated pollutants for calendar year 2005, and the resulting dollar-per-ton number, which was compared with EPA's presumptive minimum adjusted for inflation. MCAQD showed that the equivalent of the aggregate of its title V fees in fiscal year 2006<sup>3</sup> was greater than EPA's presumptive minimum which, adjusted for fiscal year 2006, is \$39.48/ton.<sup>4</sup> Therefore, by 40 CFR

<sup>3</sup> Because changes and improvements were being made to MCAQD's accounting system throughout fiscal year 2006, title V program revenue and expenses may not be 100% accurate in reflecting the title V program. However, MCAQD feels it is of sufficient accuracy to show that the aggregate of its fees is substantially greater than EPA's presumptive minimum. MCAQD is in the process of completing reconciliation of fiscal year 2006 title V revenues and expenses to the extent possible, and any corrections made will be reflected in the title V reporting category being established to track the title V fund balance.

<sup>4</sup> September 19, 2005, Memorandum, Calculation of the Part 70 Presumptive Minimum Fee Effective from September 2005 through August 2006, from Jeff Herring, Operating Permits Group, ITPID,

70.9(b)(2)(i), EPA presumes that MCAQD's fee schedule results in the collection and retention of revenues sufficient to cover the title V permit program costs.

**b. Demonstration of Title V Fees Being Used Solely for the Title V Program**

As stated above, Maricopa County was able to account for title V revenues; however, it did not have a clear accounting of costs incurred under title V. Furthermore, Maricopa County maintained a single account for title V fees, non-title V fees, and enforcement penalties. Both title V and non-title V costs were paid from this account. Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.9(a) provide that a permitting authority's title V program must ensure that all title V fees are used solely for title V permit program costs.

To correct this deficiency, MCAQD started out by hiring a third party to conduct an audit of its accounting system, department-wide. MCAQD's existing accounting system was an activity-based system to an extent; i.e., it did tag certain revenues with identifiers to distinguish one program's revenue from another program's revenue. However, the system did not provide enough detail such that title V costs could be accurately identified. The audit findings led to correction of existing accounting identifiers for costs and revenues and creation of new accounting identifiers. Each title V direct revenue and cost is now tagged with one of the following two activity codes: LSPC (Large Source Permit Compliance) and LSPR (Large Source Permit Engineering Review). These codes are now reflected in MCAQD's financial, personnel, and budgeting systems for all revenues and costs. MCAQD has also defined formulas to allocate title V indirect costs (e.g., administrative, ambient monitoring, planning, modeling) to the appropriate activity codes, thus allowing for a full accounting of its title V program costs.

With this new accounting system, MCAQD has been able to submit to EPA a table of title V revenues and costs, listed by activity code and by general category of revenue/cost, for fiscal year 2006. MCAQD showed that, for fiscal year 2006, its total title V revenues were more than sufficient to fund total title V costs, thus confirming the results of MCAQD's fee demonstration that used EPA's presumptive minimum as a basis for comparison.

With the improvements to its accounting system, MCAQD only partially addressed the issue of demonstrating that title V permit fees are used solely for title V program costs. MCAQD realized that it still needed to address the scenario of title V revenues exceeding title V costs. Currently, all title V revenues and costs<sup>5</sup> are coded before being deposited into or withdrawn from the Air Quality Fee Fund. MCAQD has the ability to identify and total the revenues originating from the title V program and manually track costs against the title V revenue total. However, to facilitate tracking of title V revenues and costs, MCAQD plans to implement an automated method of tracking the title V portion of the Air Quality Fee Fund by setting up a reporting category code in the financial system, similar to the way its grant revenue and costs are tracked. This reporting code will, in effect, generate a "fund balance report" on a regular basis to provide a year-to-date total of title V revenues, a year-to-date total of title V costs, and the net balance. It will also provide inception-to-date totals and net balance. This will allow MCAQD to know immediately, upon receipt of the report, the title V balance.

Currently, Maricopa County's Department of Finance generates a fund balance report monthly for the existing funds with reporting codes (e.g., grant funds). The fund balance report is reviewed, reconciled, and certified for accuracy by MCAQD's Financial Administrator. A written response to Maricopa County's Department of Finance is required to certify/validate the information on the report. The procedure will not differ once the title V reporting code is set up in the financial system.

With its accounting system improvements, MCAQD has demonstrated that it has the systematic ability to provide a detailed accounting of title V program costs separately from other program costs. In addition, the

<sup>5</sup> Costs such as salaries and benefits are charged to the organizational unit to which the employee belongs or supports. These determinations are made jointly by MCAQD's Financial Administrator, the applicable program manager, and the Planning and Analysis Division Manager. Costs such as supplies, services, and capital outlays are charged in the organizational unit that will use the purchased items/services to the extent possible. The program manager determines, with assistance from MCAQD's Finance Division, the appropriate organizational unit and activity code to which the costs should be charged. All expenditures require approval by a program manager and the Financial Administrator. On a monthly basis, program managers review revenue and costs charged to their organizational unit and corresponding activity codes.

above new reporting code coupled with the existing review procedures will reinforce MCAQD's ability to show that title V funds are being used solely for title V program costs.

**2. Revision of Maricopa County's Fee Rule**

Maricopa County's fee rule, Rule 280, prevented the permitting authority from issuing a final initial title V permit, permit revision, or renewal permit if the source did not pay the balance of fees due. Maricopa County's Rule 280 § 301.1, at the time of NOD issuance, stated, "The Control Officer shall not issue a permit or permit revision until the balance due on the itemized invoice is paid in full." Maricopa County encountered problems with implementation of this rule when several sources refused to pay the balance of permit fees due when they were dissatisfied with certain conditions in their permits. Existing sources retain the initial application shield granted upon their submittal of a complete application; thus, these sources claimed that they could continue to operate without an operating permit. The problem was exacerbated by the fact that Maricopa County did not enforce against those sources that refused to pay fees.

The first step MCAQD took in correcting this deficiency was to implement a policy directive that required permit fee payment within 30 days of the conclusion of the month in which a source was billed. While MCAQD worked on revising its Rule 280, it also created a policy document to provide a consistent process for collecting unpaid fees charged to owners, operators, applicants, and/or permittees of sources of air pollution subject to the Maricopa County Air Pollution Control Regulations. The document serves as guidance for MCAQD personnel.

MCAQD completed revisions to its Rule 280 in February 2006. It added the following language to the rule: "The Control Officer may deny a permit, a permit revision, or a permit renewal in accordance with Rule 200 of these rules if the applicant does not pay fees required for billable permit actions within 90 days of the invoice date." MCAQD also removed the \$40,000 maximum fee for processing Title V permit applications, thus enabling MCAQD to recover the full cost associated with issuing a Title V permit. The Maricopa County Board of Supervisors approved revisions to the rule on July 12, 2006, and the Notice of Final Rulemaking was published in the Arizona Administrative Register on

August 18, 2006. Though EPA did not include this step in the NOD as a correction to the deficiency, MCAQD also plans to formally submit the revised Rule 280 to EPA (through the State) as a revision to the title V program once all formal rulemaking documents are available (e.g., Board of Supervisor's certification, publication affidavits, Notice of Final Rulemaking).

#### *B. Permit Processing*

##### **1. Implementation Guidance Document To Ensure That Title V Permits Assure Compliance With All Applicable Requirements**

Pursuant to 40 CFR 70.7(a)(1)(iv), title V permits must assure compliance with all applicable requirements, including new source review (NSR) requirements. Maricopa County issues combined preconstruction/operating permits, with the intention of meeting both the NSR requirements in its State Implementation Plan (SIP) and the part 70 requirements in its title V program. Maricopa County, at times, implemented its title V rule, Rule 210, without proper consideration of the requirements of its NSR SIP Rule 20, resulting in the submittal to EPA of title V permits that did not contain all applicable requirements.

MCAQD has been working continuously over the past year, and communicating regularly with EPA, on an implementation guidance document. It has also given industry an opportunity to comment. MCAQD submitted a final implementation guidance document entitled "Interim Guidance Document for Title V Permit Revisions" in the NOD Response. The guidance document explains how title V sources and MCAQD will ensure that changes or modifications to an emissions unit or operation at a title V source will comply with both the preconstruction provisions in the NSR SIP and the permitting procedures in the current Rule 210. Before making changes subject to the NSR SIP, title V sources must obtain preconstruction approval from the County. By laying out procedures for determining the appropriate processing track for title V permit revisions and using flowcharts to step through the gatekeepers, the guidance document provides guidance not only for distinguishing between a significant revision and a minor revision under the title V program, but also for determining whether preconstruction approval is required pursuant to its SIP Rule 20. The guidance document also suggests that a title V source use an attached checklist to document how it proceeded through the flowcharts to

reach a determination of the type of permit it would need.

MCAQD plans to accomplish the following implementation steps by November 17, 2006: (1) Distribute a copy of the guidance document to all current title V permit holders; (2) Include the guidance document with all title V permit application forms provided to applicants; (3) Publish the guidance document with printed and on-line versions of Rule 210, to be distributed by the County; and (4) Provide training to title V permit staff on the administration of this guidance.

MCAQD plans to revise its rules when it makes the changes necessary for NSR Reform. MCAQD states that it must wait for the Arizona Department of Environmental Quality to make the changes to the State rules before it can proceed. The Interim Guidance Document will be effective only until the time MCAQD completes its NSR rulemaking to codify the principles spelled out in the guidance document.

##### **2. Written Procedures on Processing of Permit Revisions**

EPA noted two deficiencies related to Maricopa County's processing of permit revisions: (a) Maricopa County did not take adequate steps to ensure that significant permit revisions were not incorrectly processed as minor permit revisions; and (b) Maricopa County typically did not issue a separate revised permit document or technical support document when processing its minor permit revisions. Instead, it signed the application for the minor permit revision and allowed it to serve as the final minor permit revision.

MCAQD's implementation guidance document entitled "Interim Guidance Document for Title V Permit Revisions," which was part of the NOD Response, provides a procedure for determining the appropriate processing track for title V permit revisions. One of MCAQD's objectives with this guidance document is to facilitate its own efforts to ensure that significant permit revisions are not incorrectly processed as minor revisions under the title V program. Regarding the deficiency involving minor permit revisions, MCAQD has changed its practices to ensure that a minor permit revision, and not just a signed application, is issued. Furthermore, MCAQD has implemented a new procedure which requires that all title V permit revisions be signed by the Permitting Division Manager and Department Director, unless MCAQD formalizes delegation of the authority to a management level official.

##### **3. Adequate Administering of Fees To Provide Sufficient Staffing**

Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.4 provide that a permitting authority must have adequate personnel to ensure that the permitting authority can carry out implementation of its title V program. In the NOD, EPA identified the deficiency that Maricopa County was not adequately staffing its title V program.

MCAQD's strategy for hiring and retaining adequate staffing for successful implementation of its title V program included the following elements, not necessarily in this order: (1) Conduct a countywide market study to evaluate current job descriptions, career ladders, and salaries, for an "environmental engineering specialist" position; (2) implement salary increases based on the market study results; (3) perform a workload assessment to estimate the number of permitting staff needed; (4) recruit for the additional permitting staff positions; and (5) address career development (e.g., review job classifications, implement a formal training program for staff, provide mentorship to staff).

Maricopa County has a history of high staff turnover within the Permit Engineering Division. As will be described in further detail below, EPA, in its title V program evaluation report, listed poor compensation as one of the contributing factors to low morale at Maricopa County. To address this issue, Maricopa County's general human resources department conducted a market study countywide to evaluate current job descriptions, career ladders, and salaries, for an "environmental engineering specialist." Based on the results of the study, salary increases were approved and became effective December 5, 2005.

MCAQD also analyzed its workload to determine the number of additional staffpersons it would need in the Permit Engineering Division. As part of the NOD Response, MCAQD submitted a title V-specific workload assessment for fiscal year 2006 in which MCAQD estimated that it would need a total of eight title V engineers. MCAQD projected a need for three contract engineers to complete its backlog of work. On March 1, 2006, the Board of Supervisors approved MCAQD's request for an additional four full-time employees (FTEs) for the title V group of the MCAQD Permit Engineering Division. In addition, the Board of Supervisors approved three contract engineering positions, each with a one-year contract, for title V work. If MCAQD is able to fill the four FTE

positions, the resulting total number of title V engineers will be eight, which is consistent with MCAQD's latest workload assessment. MCAQD is actively recruiting to fill the four open title V engineer positions, as well as the three contract engineer positions.

EPA noted in its title V program evaluation report that poor compensation and lack of opportunity for career development contributed to low morale at Maricopa County.<sup>6</sup> So as part of its strategy to retain existing staff, Maricopa County focused on these two main issues. As noted earlier, Maricopa County addressed the first issue of poor compensation through a market study and resulting salary increases. To address the second issue of career development, MCAQD has begun to develop or has already completed the following actions EPA recommended in the title V program evaluation report: a review of the job classifications that would apply to title V engineers, implementation of a training program for staff, creation of standard operating procedures (SOPs), and providing mentorship to staff.

Regarding job classifications, MCAQD has streamlined the number of "environmental engineering specialist" (EES) job classifications from three to two and changed the definition of each classification in an effort to clarify the criteria for salary increases and promotions. MCAQD has placed more of an emphasis on number of years of experience as well as having a professional engineering (P.E.) license. For example, MCAQD decided to eliminate the former EES Intern classification which required no experience; instead, the current first-level EES classification requires at least two years of experience, and the second-level EES classification requires a P.E. license. In addition, as evidenced by the implementation of salary increases on December 5, 2005, the range of salaries for each of the current EES classifications is higher than that for any of the former EES classifications. In fact, the range of salaries for the current second-level EES classification is even higher than that for the former EES Supervisor classification.<sup>7</sup>

MCAQD has a contingency plan in place until the open title V engineering

positions can be filled. MCAQD's fee rule allows MCAQD to bill a source for the cost of obtaining consultants for expedited permit processing. Because MCAQD has an approved consultant list, the entire process from sending requests for proposals (RFP) to selecting a bidder takes only about 30 to 60 days, which is substantially faster than the standard RFP process. Since 2005, one permitting action has been completed by a consultant through this expedited process. Currently, there are three consulting firms under contract, each one working on a different permitting action. MCAQD estimates that the work performed by the consultants for these four projects (the one completed and the three still in progress) would be equivalent to the work performed by 3 FTEs. MCAQD plans to continue to use consultants as necessary.

MCAQD submitted to EPA a strategy to hire and retain adequate staff to successfully implement its title V program. Included in the submittal was an updated workload assessment specific to title V tasks. MCAQD also described a contingency plan if it was unable to fill open title V engineering positions. MCAQD has followed through on implementation of its strategy and, though it has not completed all steps, we are confident that MCAQD will continue its efforts until it is able to fill all open title V positions.

### III. EPA's Action

EPA is notifying the public that, based on the information provided by MCAQD, internal operational changes within MCAQD, and a Maricopa County rule change, EPA has determined that Maricopa County has resolved each of the deficiencies identified by EPA in the NOD for Maricopa County's title V operating permits program, 70 FR 32243 (June 2, 2005). Therefore, based on the rationale set forth above, EPA is not invoking sanctions pursuant to section 179(b) of the Act, nor administering any portion of the County's operating permits program, pursuant to 40 CFR 70.10(b)(4).

### IV. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action must be filed in the United States Court of Appeals for the appropriate circuit by January 19, 2007.

### List of Subjects in 40 CFR Part 70

Environmental protection,  
Administrative practice and procedure,

Air pollution control, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 9, 2006.

**Wayne Nastri,**

*Regional Administrator, Region 9.*

[FR Doc. E6-19555 Filed 11-17-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

### Regulation of Fuels and Fuel Additives

#### CFR Correction

In Title 40 of the Code of Federal Regulations, parts 72 to 80, revised as of July 1, 2006, on page 695, § 80.75 is corrected by reinstating paragraph (a)(2) to read as follows:

#### § 80.75 Reporting requirements.

\* \* \* \* \*

(a) \* \* \*

(2) The following information shall be included in each quarterly report for each batch of reformulated gasoline or RBOB which is included under paragraph (a)(1) of this section:

- (i) The batch number;
- (ii) The date of production;
- (iii) The volume of the batch;
- (iv) The grade of gasoline produced (i.e., premium, mid-grade, or regular);
- (v) For any refiner or importer:
  - (A) Each designation of the gasoline, pursuant to § 80.65; and
  - (B) The properties, pursuant to §§ 80.65 and 80.66;
- (vi) For any importer, the PADD in which the import facility is located;
- (vii) [Reserved]
- (viii) In the case of any previously certified gasoline used in a refinery operation under the terms of § 80.65(i), the following information relative to the previously certified gasoline when received at the refinery:

- (A) Identification of the previously certified gasoline as such;
- (B) The batch number assigned by the receiving refinery;
- (C) The date of receipt; and
- (D) The volume, properties and designation of the batch.

\* \* \* \* \*

[FR Doc. 06-55529 Filed 11-17-06; 8:45 am]

**BILLING CODE 1505-01-D**

<sup>6</sup> See Finding 7.6 of EPA's program evaluation report.

<sup>7</sup> According to MCAQD Human Resources, the average salary increase for the MCAQD Permit Engineering Division per employee ranged from 0.21% to 21%.