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Ref: 8ARD-PM

Mr. Shaun McGrath
Director of Environmental Health and Protection
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

Re: EPA Objection to Suncor Energy, Inc. Plant 2 Title V Operating Permit

Dear Mr. McGrath:

This letter is in response to the Colorado Department of Public Health and Environment (CDPHE) submittal to our office of the proposed renewal of the title V permit for the Suncor Energy, Inc., Plant 2 Refinery. EPA's statutory 45-day period to review this permit began on February 9, 2022, and ends on March 28, 2022.

We have reviewed the proposed title V permit action, including CDPHE's response to comments and its Technical Review Document (TRD). In accordance with Section 505(b)(1) of the federal Clean Air Act and 40 CFR 70.8, EPA objects to the issuance of this proposed title V permit because the Agency has determined that the permit is not in compliance with applicable requirements of the Act. Enclosure A to this letter provides the specific reasons for each objection and a description of the terms and conditions that the permit must include to respond to the objections.

We suggest that the revised permit (or permit record) be submitted to EPA with sufficient advance notice that any outstanding objection issues may be resolved in a timely fashion. Section 505(c) of the Act and 40 CFR 70.8(c)(4) provide that if the permitting authority fails, within 90 days of the date of an objection, to submit a permit revised to address the objection, then EPA will issue or deny the permit.

We are committed to working with CDPHE to ensure that the final title V permit is consistent with all applicable title V permitting requirements and the EPA-approved Colorado title V Air Permitting Program.

In addition, we have concerns related to this proposed permit, which are separate from our objection. These concerns are enumerated in Enclosure B.

If you have questions or wish to discuss this further, please contact me, or your staff can contact Carl Daly, Acting Director, Air and Radiation Division, at (303) 312-6416 or at daly.carl@epa.gov. Thank you for your cooperation.

Sincerely,

3/25/2022

X KC Becker

Signed by: KATHLEEN BECKER
KC Becker
Regional Administrator

Enclosures

cc: Michael Ogletree, CDPHE – APCD

Enclosure A
EPA Objections to Colorado Department of Public Health and Environment's Clean Air Act (CAA) Title V Permit 95OPAD108 Suncor Energy, Inc. Plant 2

In the draft Suncor Plant 2 title V operating permit, CDPHE, along with Suncor, identified the fluid catalytic cracking unit (FCCU) as being subject to the Compliance Assurance Monitoring (CAM) provisions specified in 40 CFR Part 64[1], which require, among other things, the development and submittal of a compliance plan to demonstrate compliance with Part 64 applicable requirements. In addition, as part of the public comment period and in response to comments, CDPHE determined that the sulfur recovery unit (SRU) was also subject to CAM requirements. Suncor developed and submitted the CAM plans for FCCU and SRU, which are found in Appendix G and Appendix I of the Plant 2 title V permit.

In the TRD, CDPHE discussed two other units at Plant 2 that are also potentially subject to CAM.

1. **Objection for Failure to Identify Specific Applicable Requirements under 40 CFR Part 64, Compliance Assurance Monitoring (CAM) - Truck Loading Dock Flare (C001) and Railcar Dock Flare (C002)**

Beginning on page 24 of the TRD, CDPHE discusses the CAM applicability of emission points C001 and C002:

> Truck Loading Dock Flare (C001) and Railcar Dock Flare (C002): Both the truck dock and the railcar dock flare have permitted emission limits for VOC (24.1 tons/yr and 28.3 tons/yr) and rely on the flares to comply with the VOC emission limits. Assuming a reasonable flare control efficiency of 95%, uncontrolled VOC emissions are above the major source level. Since these flares use a control device to comply with a VOC emission limit, CAM potentially applies. The current title V permit (last revised June 15, 2009) indicates that both flares are subject to the requirements in 40 CFR Part 60, Subpart A, § 60.18 (included in Section II, Condition 37 of the current permit), which specifies that flares be operated with a flame present at all times (60.18(b)(2)) and that the presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame (60.18(f)(2)). In addition, the truck dock flare is subject to a temperature monitoring requirement (maintain a 12-hour rolling average). Therefore, the [Air Pollution Control] Division considers that CAM does not apply to the railcar and truck dock flares, because the title V permit specifies a continuous compliance determination method (thermocouple or equivalent to detect the presence of a flame and temperature monitoring (truck dock flare)), and therefore, these units are exempt from CAM in accordance with the provisions in 40 CFR 64.2(b)(1)(vi).

40 CFR § 64.2(b) addresses exemptions, and § 64.2(b)(1)(vi) provides an exemption for:

[1] CAM is intended to provide a reasonable assurance of compliance with applicable CAA requirements for large emission units that rely on pollution control device equipment to achieve compliance. Monitoring is conducted to determine that control measures, once installed or otherwise employed, are properly operated and maintained so that they continue to achieve a level of control that complies with applicable requirements.

> Emission limitations or standards for which a part 70 or 71 permit specifies a continuous compliance determination method, as defined in § 64.1.[2]

In addition, 40 CFR § 64.1 defines "continuous compliance determination method":

> *Continuous compliance determination method* means a method, specified by the applicable standard or an applicable permit condition, which:
> (1) Is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and
> (2) Provides data either in units of the standard or correlated directly with the compliance limit.

The TRD at page 24 does not address both criteria above in concluding that the current parametric monitoring in the permit is a "continuous compliance determination method," and as a result it has not justified its conclusion that an exemption from CAM monitoring per § 64.2(b)(1)(vi) applies to the Truck Loading Dock Flare (C001) and Railcar Dock Flare (C002). While the TRD describes the monitoring to assure the continuous presence of the pilot light, a continuous compliance determination method must also provide data either in units of the standard or correlated directly with the compliance limit in addition to satisfying continuity requirements per this definition. See 40 CFR 64.1. However, the permit monitoring for C001 and C002 does not require that data be provided in the manner specified at 40 CFR 64.1; accordingly, the definition of continuous compliance determination method is not met and the exemption at 40 CFR 64.2(b)(1)(vi) does not apply.

EPA objects to the title V permit based on the fact that CAM for C001 and C002 have been determined to be excluded from the applicable requirements of 40 CFR Part 64 without sufficient justification. CDPHE must evaluate C001 and C002 and determine whether an exemption applies to either of these units per § 64.2(b). Further, assuming the permit monitoring for C001 and C002 described in the TRD meets both criteria for being considered a *continuous compliance determination method* and therefore not subject to CAM, CDPHE must ensure that the record is complete by documenting a sufficient justification for the exemption in the permit record.

2. Objection for Failure to Require CAM or Justify Why CAM Does Not Apply - Main Plant (P2) Flare (C005)

Beginning on page 25 of the TRD, CDPHE discusses the CAM applicability of emission point C005:

> Main Plant (P2) Flare (C005): The main plant (P2) flare is subject to permitted VOC emission limits. While the P2 flare is used to control VOC emissions from some equipment to meet certain regulatory requirements, the P2 flare is not strictly a control device. Flares are used at the refinery for startup, shutdown and malfunction of process units and are more appropriately considered to be safety devices. Flares are listed as affected facilities under 40 CFR Part 60, Subpart J and Ja. Affected facilities are defined in 40 CFR 60.2 as "any apparatus to which a standard is applicable." Typically, NSPS subparts do not include control devices as an affected facility, which seems to bolster the position that the flare is not primarily a control device.
>
> Under CAM, control devices do not include inherent process equipment, which is defined as Equipment that is necessary for the proper or safe functioning of the process, or material recovery

[2] Note that the exemption § 64.2(b)(1)(vi) does not apply if the compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device.

> equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of this part, inherent process equipment is not considered a control device.
>
> The Division considers that the main plant (P2) flare is more appropriately considered inherent process equipment and thus not subject to CAM because it is not considered a control device. It should be noted that the current title V permit (last revised June 15, 2009) specifies that the P2 flare is also subject to the requirements in §60.18 as discussed above for the truck and railcar dock flares. Thus if the P2 flare were considered a control device, it would also be exempt from CAM as discussed above for the truck and railcar dock flares.

EPA does not agree that the C005 should be considered inherent process equipment for the purposes of CAM.

CDPHE cites to the definition of inherent process equipment within Part 64 to base their determination that C005 is not a control device. 40 CFR § 64.1 defines inherent process equipment as:

> …equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of this part, inherent process equipment is not considered a control device.

The definition of control device found at 40 CFR § 64.1 states:

> Control Device means equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices (such as carbon beds), condensers, scrubbers (such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems (such as water, steam, ammonia, sorbent or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit (e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters). For purposes of this part, a control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition shall be binding for purposes of this part.

CDPHE's determination that CAM does not apply to C005 centers on the determination that it would qualify as inherent process equipment. In support of this determination, CDPHE generally states that flares "are more appropriately considered to be safety devices" and thus an inherent process equipment, even though CDPHE acknowledges that "the P2 flare is used to control VOC emissions from some equipment to meet certain regulatory requirements." CDPHE does not state specific reasons why C005

should primarily be considered safety equipment in light of its dual functions. While CDPHE acknowledges that "the P2 flare is used to control VOC emissions from some equipment to meet certain regulatory requirements," there is no discussion of why C005 does not operate at higher efficiency during the times it functions as a control device. Condition 8.1 requires that Suncor assume an efficiency of 98% at all times a flare is present and 0% for every 15 minute block of time in which at least one minute was shown to not have a flame present. This requirement demonstrates that the flare is, at all times, primarily a control device, and required to operate at a high rate of control. For these reasons, EPA does not agree that C005 is considered as inherent process equipment as defined in Part 64.

Finally, CDPHE also states that if C005 were to be considered a control device, it would be exempt for the same reasons as C001 and C002. Similar to the discussion on C001 and C002, a continuous compliance determination method should provide data either in units of the standard or correlated directly with the compliance limit in addition to satisfying continuity requirements per this definition. See 40 CFR 64.1. The permit monitoring for C005 does not require providing data either in units of the standard or correlated directly with the compliance limit in addition to satisfying continuity requirements per this definition; accordingly, it does not meet the definition of continuous compliance determination method, and consequently the exemption in 40 CFR 64.2(b)(1)(vi) does not apply.

Therefore, EPA objects to the title V permit based on the fact that CAM for C005 has been improperly excluded from the applicable requirements of 40 CFR Part 64. CDPHE must reevaluate C005, and if applicable determine that the permit appropriately incorporates CAM monitoring based on an evaluation of the permit monitoring, justifying the decision as documented in the permit record.

Enclosure B
Additional EPA Concerns Related to Colorado Department of Public Health and Environment's Clean Air Act (CAA) Title V Permit
95OPAD108 Suncor Energy, Inc. Plant 2

EPA is committed to advancing environmental justice and incorporating equity considerations into all aspects of our work. This commitment includes improving our assessment and consideration of the impacts of permits on communities already overburdened by pollution. EPA welcomes CDPHE's partnership in this important effort.

EPA agrees with the determination by CDPHE and many commenters on the proposed permit that the location of the Suncor facility raises significant environmental justice concerns, as illustrated by the severity of pollution and described health impacts facing the communities living in proximity to the Suncor site. The neighborhoods within a three-mile radius of the facility have some of the highest levels in the state for all of the environmental indicators used by EPA's environmental justice mapping and screening tool, EJScreen. EJScreen provides EPA with a nationally consistent dataset and approach for combining and comparing environmental and demographic indicators. It is a useful first step in understanding environmental justice concerns that communities face.

The Environmental Justice Index is a series of eleven environmental and demographic data sets that are used to populate twelve EJScreen indicators. The Environmental Justice Index for all twelve of the EJScreen indicators in the three-mile area around the proposed facility exceeds the 90th percentile in the state. These indices are: particulate matter of less than 2.5 microns in diameter; ozone; diesel particulate matter; air toxics cancer risk; air toxics respiratory hazard; traffic proximity; lead paint; Superfund proximity; Risk Management Plan facility proximity; hazardous waste proximity; underground storage tanks; and wastewater discharge. According to EJScreen, the population in the area around the proposed facility is disproportionately low income (47%, compared to 25% for the state), people of color (74%, compared to 32% for the state) and includes persons with limited English proficiency. The Suncor facility is in an area that is heavily populated by industrial facilities and transportation corridors and is close to residential housing and schools.

In its response to comments from 350 Colorado, CDPHE explains that Suncor is located in an area that meets the Colorado Environmental Justice Act's statutory definition of a Disproportionately Impacted Community (C.R.S. 24-4-109(2)(b)(II)) based on the demographics of the area, and that the communities around Suncor are disproportionately impacted by multiple sources of industrial and transportation-related air pollution. The state also describes, in its Response to General Public Comments, that the Commerce City/North Denver area where the refinery is located is impacted by multiple sources of pollution, including Suncor, that cumulatively impact air, water, and soil. CDPHE further states that these cumulative impacts may contribute to health disparities among the residents of the area, who are predominantly low-income and people of color.

EPA supports CDPHE's enhanced outreach and engagement with the community regarding this proposed renewal of the Suncor Plant 2 title V permit. Notably, CDPHE held two listening sessions

prior to releasing the draft permit for public comment, and provided fact sheets and advanced notice of when the permit would be released for public comment. A Spanish language interpreter was provided at the listening sessions and the fact sheets were translated into Spanish. The public comment period for the draft permit was followed by two virtual public comment hearings, also with a Spanish language interpreter. CDPHE also extended the duration of the public comment period based on a request made at the hearings.

Finally, because of the environmental conditions already facing this community, and the potential for disproportionate impacts based on race, national origin, or other protected class, the impacts related to the facility may raise civil rights concerns. It is important that CDPHE assess its obligations under civil rights laws and policies. As a recipient of federal financial assistance from EPA, CDPHE must ensure that no person is excluded from participation in, denied the benefit of, or subjected to discrimination based on race, color, national origin (including limited English proficiency), age, disability or sex, under its programs or activities, consistent with title VI of the Civil Rights Act and other federal civil rights laws.

EPA has reviewed the proposed permit and associated permit files and has the following additional comments and recommendations:

1. Minor Modifications to the Suncor Plant 2 Refinery

   This title V permit was originally issued in 2006, was revised in 2009, and was set to expire in 2011. A renewal application was submitted by Suncor in 2010, allowing the source to continue operation under the 2006 permit (as revised in 2009). Title V permits are required to be renewed every 5 years, but the state did not act on the 2010 renewal application until the present proceeding. CDPHE has processed approximately 40 title V permit modifications, including about 29 minor permit modifications, since the permit was last revised in 2009. Many of the minor permit modifications have involved minor new source permits to construct or modify. Colorado's approved combined minor NSR and title V permit process does not require CDPHE to undertake public notice and comment for minor modifications to this title V permit. As to minor modifications to operating permits, considered separately, the lack of notice and comment may be consistent with federal regulations at 40 CFR 70.7(a)(1)(ii). But issuing minor NSR permits, including those authorizing physical changes to the facility that would increase emissions, without a process for public notice and comment raises significant concerns. Because this is the first permit renewal since the title V permit was originally issued in 2006, this current permit renewal process is the first time the modifications to the facility reflected in these permit modifications have gone through notice and comment, and in some instances the minor NSR construction activities processed through those minor modifications occurred many years ago. Further, for title V modifications involving changes at the facility that require a minor NSR permit, CDPHE was required to evaluate whether the proposed source or activity would comply with applicable ambient air quality standards and all applicable regulations. Colorado Regulation 3 Part B.II.A.6 and III.D.1.; Part C.X.D.5.d. As discussed further under concern #2 below, the permit record provided for some of these actions does not appear to sufficiently demonstrate that these projects will meet applicable ambient air quality standards.

   EPA is concerned about the manner in which the approved title V combined operating/construction permit program has, in practice, deprived the public of meaningful participation in the activities subject to minor NSR permit requirements, including the opportunity to comment on the impact of emissions subject to minor NSR permit requirements or APCD's analyses of whether those

emissions will meet health-based ambient air quality standards. EPA's concern about the lack of public involvement is exacerbated by the protracted delay in renewing the title V permits for the facility.

Recommendations: EPA recommends that CDPHE work with EPA Region 8 to evaluate programmatic changes to ensure that going forward, the public will have timely and meaningful opportunities for notice and comment on all actions that require a minor NSR permit. Such opportunities should include providing adequate information and analyses for the public to comment on the methodologies and emissions limits that CDPHE utilizes, including those used to demonstrate that the minor NSR permits processed as minor modifications to the title V permit meet ambient air quality standards. EPA has significant concerns about the existing approved title V combined operating/minor NSR construction permit program and will also be reviewing and examining possible actions to revise the program. EPA would like to work closely with the state to implement program revisions that will provide for public notice and comment on all minor NSR permitting.

EPA further recommends that CDPHE analyze whether there are minor modifications to this permit that should not have been processed as such under the state's Regulation 3, Part C Minor Permit Modification Procedures. This could include assessment of whether any changes processed as minor permit modifications should have been treated as significant under Part C, Section I.A.7. If so, the changes should have undergone public notice in accordance with Part C, Section VI.

Finally, EPA also recommends that, until such time that all minor NSR permits go through a public notice and comment process, when CDPHE is proposing to renew a title V operating permit that has been subject to minor modifications to process minor NSR construction permit applications during the prior permit term, it provide records that demonstrate whether the permit includes and assures compliance with all applicable requirements. Doing so will ensure that the public has an opportunity to review and comment on the emissions information related to the source construction or modification underlying the minor permit modifications. EPA also requests that these records of minor modifications associated with the title V permit renewal be submitted to EPA along with the proposed permit.

2. Minor NSR Permitting and National Ambient Air Quality Standards (NAAQS) Protection
The state's approved stationary source permitting regulations require that CDPHE, and the Air Pollution Control Division in particular, ensure that issuance of permits, including minor NSR source permits, does not jeopardize attainment of the NAAQS:

- The Division must prepare a preliminary analysis of the permit application that allows it to "determine whether the new source will, at date of commencement of operation, comply with… [a]ny applicable ambient air quality standards and all applicable regulations," among other things. Regulation 3, part B, section III.B.5.
- The Division may only grant a construction permit if it finds that (among other things) "[t]he proposed source or activity will not cause an exceedance of any National Ambient Air Quality Standards" and that it "will meet any applicable ambient air quality standards and all applicable regulations." Reg. 3, part B, section III.D.1.
- The Division must deny the permit if it determines that the source cannot comply with the provisions of part B, section III.D., including the air quality standards provisions quoted above. Reg. 3, part B, section III.F.

- Sources applying for combined construction/operating permits must include "[d]ata necessary to allow the Division to determine whether the source complies with…[a]ny applicable ambient air quality standards." Reg. 3, part C, section III.C.12.

The record supporting a minor NSR permitting action must include the preliminary analysis addressing the elements described in section III.B.5; must state the Division's determinations as to compliance with NAAQS, applicable regulations, and other required elements; and must contain sufficient information to support those determinations.

In some cases, we have noted concerns with the sufficiency of the supporting record. These concerns are exacerbated by the fact that as a general practice the state does not provide the record for the minor NSR permit determinations to EPA, but instead provides only the minor NSR construction permit application and (where applicable) the title V minor modification used to process the application. Further, it appears that in some instances the state rejected the use of modeling in assessing permitting actions without sufficient justification. Specifically, commenters noted that for three Suncor modifications the state relied on its now rescinded Memo 10-01 to conclude that modeling of the effect of emissions increases was not warranted, because the annual emissions increase fell below the 40 tpy threshold in Memo 10-01. In response to commenter requests that CDPHE revise the TRD to reflect the Division's rescission of Memo 10-01, CDPHE acknowledged that it relied on Memo 10-01 for three modifications but stated the TRD was essentially finalized in February of 2020 which is before the Memo was retired, thus the TRD was not revised.

Recommendations:
A reliance on emissions thresholds to reject the use of modeling could be inappropriate and use of an emissions threshold to reach the conclusion that adverse impacts will not occur does not necessarily provide a record that demonstrates that the permitting action will not cause a NAAQS exceedance. CDPHE must ensure that future permitting records support the required demonstrations in Regulation 3, part B.

3. Cumulative Air Impacts Analysis
Several commenters raised concerns about the cumulative environmental and health impacts associated with air emissions from the Suncor facility in conjunction with the multiple sources of air pollutants in the area around the facility. In its response to comments submitted by the Center for Biological Diversity, CDPHE commits to conducting a comprehensive analysis of emissions from Suncor and other sources in the area; however, CDPHE then notes that since compliance with NAAQS is not an applicable requirement for title V permits, this analysis should be done outside of the title V renewal process.

Recommendation: EPA urges CDPHE to, in conjunction with stakeholders, expedite the comprehensive analysis, and ensure that the analysis includes the preparation of a cumulative air impacts assessment and identification of specific actions that can be taken to mitigate such impacts. EPA recommends that the analysis include cumulative air impacts associated with emissions from all emission units at the Suncor facility, fugitive emissions from the facility, emissions from nearby industrial facilities, and transportation, to provide a more complete assessment of the cumulative ambient air impacts of the facility on this community. Consistent with the state's environmental justice policies and its acknowledgement that the Commerce City/North Denver area is impacted by multiple sources of pollution, including Suncor, that cumulatively impact air, water, and soil, EPA recommends that CDPHE consider expanding the analysis to potential impacts from other pathways of exposure. Such an analysis would help to illustrate the direct link between the environmental

burdens in this community and the health of its residents.

4. Fenceline Monitoring
   Several commenters requested that enhanced fenceline monitoring at Suncor be included in this permit renewal. CDPHE responded that Colorado's HB21-1189 requires that facilities such as Suncor conduct fenceline monitoring for hydrogen cyanide, benzene and hydrogen sulfide beginning January 1, 2023, and to disseminate all fenceline monitoring data to the public. CDPHE recently held two public sessions on the draft fenceline monitoring plan, which is currently available for public comment. The response further states that while the Colorado statute requires that fenceline monitoring requirements be included in the title V permit, such requirements are not included in this permit revision as the plan is still in process but will be included later as state-only requirements.

   Recommendation: EPA recommends that once the fenceline monitoring plan is finalized, the requirements of HB21-1189 be incorporated into the State Implementation Plan for approval by EPA or into a construction permit, so it can be included as an applicable federal requirement in the title V permit.

5. Summaries and Reports Available to the Public in English and Spanish
   A commenter requested that CDPHE include a reporting requirement that Suncor make available to the public in a readily understandable format and in English and Spanish, summaries and full reports concerning: the flare management plan, root cause analysis of corrective actions, flaring activities in monthly reports, monthly excess emission reports and stack test results, and monthly fenceline monitoring and trend data. CDPHE responded that reports are submitted to either EPA or APCD and many reports are available on the APCD online records system. CDPHE also explained that state and federal regulations do not require summaries and information cannot always be simplified, but APCD is open to working with interested parties outside the context of this permitting action and to providing translation resources to make specific reports or other information available in Spanish upon request.

   Recommendation: EPA recommends that CDPHE initiate outreach if it hasn't already, to work with interested parties to make information more accessible and understandable in English and Spanish. EPA appreciates APCD's offer to make specific reports or other information available in Spanish.