Volume II

Part J - Public Comment and State Response

Comments on Proposed Revisions to the Alabama Department of Environmental Management's Administrative Code

COMMENTS FROM TVA

1. Page 7-4, 335-1-7-.03 Exemptions--The provisions for fees should be modified to clarify that exempted emissions at a major source are not subject to fees.

2. Page 7-5, 335-1-7-.04(6) Fee Schedule--Sources which paid fees during 1991 through 1993 are given a credit for fees toward the amount of fees due in subsequent years. We support this provision which more equally distributes the fees among the Title V sources.

3. Page 14-7, 335-3-14-.02(2) Permit Procedure--The regulation specifies that the Director shall act on an application "within a reasonable time." We suggest that "reasonable time" be specified.

4. Page 14-25, 335-3-14.03(2)(a) Definitions--Definitions for the purposes of this or any other section should be precise. The statement that "unless a different meaning is plainly required by the context" should be removed and the terms and phrases in the section modified to conform to the definitions provided.

5. Page 14-61, 335-3-14-.05(2)(1)--The definition of significant impact specifies that the deminimis levels must be exceeded in the portion of the nonattainment area where ambient standards are "actually violated." How is the area where standards are actually violated to be determined? If an area within a nonattainment area is not in nonattainment (and that can be shown conclusively), the boundaries of the nonattainment area should be changed. This provision allows for a mini nonattainment determination with each application without scrutiny that the regulatory process demands.

6. Page 14-63, 335-3-14-.05(2)(1)3--Under what conditions may the reviewing authority presume that the sources allowable emissions are equal to their actual emissions?

7. Page 14-65, 335-3-14-.05(4)(d)--How are the nonattainment provisions applied in the event that the source achieves operable status and the area is not yet eligible to request redesignation or has not been redesignated?

8. Page 16-3, 335-3-16-.01(o) "Insignificant Activity" and Page 16-9, 335-3-.16-.01(bb) Trivial Activity--The Department has taken a good approach toward identifying insignificant and trivial activities under CFR Part 70.4(b)(2) and 70.5(c). Some states are proposing to incorporate such lists into their regulations, however, we prefer the flexibility which the Department's approach offers.

   We are concerned that EPA may not approve a list of activities unless it is actually incorporated into the rules. It is important that Alabama continue its offers to comprehensively identify the many different kinds of activities which should be excluded from consideration in the Title V permitting process.

   We offer the following modifications and additions to the list of activities being compiled by the Department.

Trivial Activities

The following activities have been identified at TVA fossil plants, and it is recommended that they be considered trivial activities.

L. Internal combustion engines, whether fixed or mobile, and vehicles used for the transport of passengers or freight.
M. Direct fired sources used for heating and ventilating.
N. Open burning allowed under ADEM's regulations.
O. Voluntary replacement or modification of an air pollution control device that provides equivalent or greater control of air pollutants.
P. Fire schools or fires for training.
Q. Refrigeration systems.
R. Heating and air-conditioning systems.

It is recommended that A(3) be modified to include any food preparation for onsite consumption.

It is recommended that B(1) be changed to:

Any activity related to normal maintenance and repair of a facility provided that the primary activity of the facility is not similar to such repair or maintenance activities. Such activities shall include:

(a) Cleaning
(b) Painting
(c) Welding
(d) Sweeping
(e) Solvent use
(f) Degreasing
(g) Vacuuming
(h) Abrasive use (such as sandblasting)
(i) Steam Cleaning
(j) Washing
(k) Coating
(l) Removal of Insulation
(m) Retarring roofs
(n) Paving parking lots

It is recommended that B(2) be modified as follows: clerical activities such as use of office supplies or operation . . .

It is recommended that F be expanded as follows: Vents from sewer lines or enclosed areas constructed for safety or building code purposes.

Insignificant Activities

In addition to the list of insignificant activities, the Department is proposing that an emissions unit with emissions of less than 5 tons/year or 1000 pounds of toxics per year is an insignificant activity. We support this proposal.

It is recommended that the following also be considered as insignificant activities.

H. New or modified pilot or prototype plants provided that the following conditions are satisfied. No hazardous air pollutants are emitted and the plant is constructed and operated solely for testing and design purposes.

The exemption for fuel oil storage tanks with a capacity of less than 2000 gallons (item D) may set too low a cutoff to be effective. By setting a limit based on specific gravity of the tank contents larger tanks could be exempted for some compounds. A cutoff of 10,000 gallons for gasoline tanks and 40,000 for No. 2 fuel oil is recommended. Also, with this as well as activities such as welding, a statement should

be added that the exemption does not apply for emission of hazardous or toxic contaminants.

9. Page 16-4, 335-3-16-.01(q)1(i)--The last portion of this paragraph excludes certain fossil-fuel exploration and production sources from being aggregated to create a major source. Power lines stretch along long rights-of-way which could technically be considered contiguous properties, and various activities and facilities along these lines emit air pollution. This section should also exempt such right-of-way sources from being aggregated with generating station emissions.

10. Page 16-6, 335-3-16-.01(r)--Under what circumstances does the definition of Operating Permit or Permit differ from that given here? How does one know when the context suggests otherwise?

11. Page 16-8, 335-3-16-.01(v)(4)--The definition of "responsible official" should be revised to clarify that utilities are not required to appoint their Title IV "designated representative" (DR) as their Title V responsible official unless they choose to do so. Under EPA's regulations, DRs can be made responsible officials at a utility's discretion.

12. Page 15-4, 335-3-15.02(8)(b) and page 16-11, 335-3-16.02(8)(b)--The proposed regulation could be interpreted to require a proportional reduction at each emission point at a permitted facility during air pollution episodes. TVA thinks a facility should be permitted to reduce emissions in the most cost-efficient manner and still reduce the total facility emissions by the required amount. It is recommended that these paragraphs be amended as follows:

    "The Director shall deny a Synthetic Minor Operating Permit (for 335-3-15.02(8)(b) or Operating Permit (for 335-3-16.02(8)(b) if the applicant does not present, in writing, a plan whereby the total emissions of air contaminants by every article, machine, equipment, or contrivance described in the permit application, will be included in the calculation of the percent reduction required during periods of an Air Pollution Alert . . ."

13. Page 16-19, 335-3-16-.03 Applicability--Coal-fired utilities emit a number of pollutants which Congress listed as hazardous or toxic under Section 112(b) of the Clean Air Act, but they emit them in small concentrations. In the Clean Air Act Amendments of 1990, Congress directed the U.S. Environmental Protection Agency to conduct two studies of the toxic pollutants emitted by utilities before determining whether utility units should be regulated as toxic or hazardous air pollutant sources. These studies are expected to be completed in 1995. EPA earlier considered utility toxic emissions and concluded that utility toxic emissions were not significant threats to human health or the environment.

    Until the EPA utility studies are completed and EPA decides whether and to what extent utility units should be regulated as toxic pollutant sources, it would be appropriate to exclude utility toxic pollutants from the Title V permitting program. Utilities do not routinely monitor or estimate toxic pollutants separately from the other pollutants which they monitor. Requiring utility sources to provide information about their toxic pollutants in their Title V permit applications would substantially increase the burden on them and on ADEM, a burden which is unlikely to have concomitant environmental benefits.

    Therefore, it is recommended that utility toxic emissions be excluded from the Title V program. The following regulatory provision would do this:

    "Emissions of hazardous air pollutants emitted from steam-electric utility units with a heat input of greater than 250 million BTU/hr and associated equipment shall not be subject to the requirements of regulation 335-3-16."

14. Page 16-19, 335-3-16-.03(2)--This section on applicability exempts only nonmajor sources for which NSPS (Chapter 10) or NESHAPS (Chapter 11) apply. Other nonmajor sources should also

be specified including sources which have only trivial or insignificant sources and are not otherwise major.

15. Page 16-19, 335-3-16-.04(1)--The phrase "upon becoming subject to these regulations" is not clear. We believe that this is intended to mean upon EPA approval of the regulations, and we recommend that this be clarified.

16. Page 16-19, 335-3-16.04--In issuing permits, it is recommended that ADEM coordinate the Title V permit Application process for sources subject to Title IV with the Phase II acid rain permit application process.

17. Page 16-20, 335-3-16-.04(5) and page 16-27, 335-3-16-.05(10)--Permittees are required to furnish in a "reasonable time" information which the Department requests. In order to provide guidance to permittees on what would normally constitute a reasonable time, it is recommended that "reasonable time" be changed to "within 30 days or such other reasonable time as the Department may set."

18. Page 16-25, 335-3-16-.05(2)(a)--The regulation specifies that Title V permits are to be issued for a fixed term of five years. It is recommended that the term of the initial permits be set so that 20 percent of them expire in each year.

19. Page 16-24, 335-3-16-.05--A provision should be added to specify that information in the permit application which is not expressly identified in the context of a permit requirement shall not be a constraint on operation of the source. For example, operations which deviate from design conditions given in the permit application should not be restricted provided that compliance is not jeopardized.

20. Page 16-26, 335-3-16-.05(3)(c)2.--The permit is to contain a provision to report deviations from permit requirements within 48 hours. This should be clarified so that minor deviations such as short exceedances of an opacity limit are only reported as part of the routine reporting.

21. Page D-1, Appendix D, Nonattainment Areas--It is proposed to reclassify Colbert Lauderdale County from nonattainment to attainment for the secondary sulfur dioxide standard. Based on the ambient air quality data in this area, TVA supports this change.

COMMENTS FROM ALACHEM

22. 335-1-6-.03, Exemptions--335-1-6-.03 does not mention Synthetic Minor Operating Permits nor General Permits. It is not clear how application and emission fees apply to these permits.

    Alachem requests that ADEM exempt Synthetic Minor Operating Permits and General Permits from application fees.

23. Chapter 335-3-10, 335-3-11, and Appendix D--Alachem supports the proposed revisions.

24. 335-3-14-.01, General Provisions--335-3-14-.01(7)(a)1.(i) restates an ADEM definition of "Greenfield Site" which is not totally consistent with the industry understanding.

25. 335-3-14-.03, Standards for Granting Permits--Alachem supports adoption of the new 335-3-14-.03(1)(h), "Exceptions to violations of emissions limits." The adoption of this provision will correct the current undesirable situation in which all excess emissions of regulated air pollutants are air rule violations, regardless of whether or not they are the result of truly unforeseen and unpreventable events. Although there is general agreement that the ADEM has exercised appropriate enforcement discretion in this area, this situation is an uncomfortable one for industry.

This rule should benefit ADEM as well: decisions to excuse/enforce will be supported by code at a time when public scrutiny and demand for explanations is rapidly increasing.

Similar emission exemption rules are included in 335-3-15.04(5), and 335-3-16-.11. However, the wording in all three regulations is not the same: for example, 335-3-14 mentions load changes as being potentially exempt, as does 335-3-16, but 335-3-15 does not include this example.

Alachem requests that the excess emission exemption wording in 335-3-14 be standardized in 335-3-15 and 335-3-16.

26. 335-3-14.04. Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration Permitting (PSD)--Alachem supports the removal of asbestos, beryllium, mercury, vinyl chloride, reduced sulfur compounds, arsenic, and benzene from the list of significant emissions included in 335-3-14-.04(2)(w)(1). Alachem believes that emissions of these chemicals will be best managed under the developing toxics program required by the Federal Clean Air Act Amendments of 1990, which clearly indicate that Congress intended for the EPA to regulate emissions of hazardous air pollutants by maximum achievable control technology, not by PSD review.

27. 335-3-15-.02. General Provisions--335-3-15-.02(8)(h)4.(i) refers to a "Subparagraph 335-3-15-.03(1), which is not included in the proposed rule.

Alachem requests that 335-3-15-.02(8)(h)4.(i) be revised to show the correct subparagraph.

28. 335-3-15-.02(8)(h)4.--Presents some reasons which could result in revocation of Synthetic Minor Operating Permits:

"4. failure to allow employees of the Department upon proper identification to:

(i) enter any premises where any article, machine, equipment, or other contrivance described in Subparagraph 335-3-15-.03(1) is ...

(ii) have access to and copy any records ...

(iii) inspect any monitoring equipment ...

(iv) have access to and sample any discharge ...

Alachem understands the need for access to a permittee's premises to assure compliance with the applicable requirements of the operating permit, but there are situations which may not be safe to allow personnel at any time. We note that 335-3-16-.07(2) contains a similar requirement, but includes the words "at reasonable times", which is in agreement with 40 CFR 70.6(c)(2).

Alachem requests that subparagraphs 335-3-14.02(4)(e) (not proposed for revision) and 335.3.-15-.02(8)(h)4 be worded similarly to 335-3-16.07(2), for safety and for consistency.

29. 335-3-15-.04. Synthetic Minor Operating Permit Requirements--This subparagraph does not state the application process which will be used by ADEM to process these permits. There is no mention of fee applicability information like that found in 335-3-16-.04(8) or modification procedures, to include transfer of ownership, like those found in 335-3-16-.13.

Alachem requests that a Synthetic Minor Operating Permit application process and modification procedures, similar to those found in Chapter 335-3-16, be included in Chapter 335-3-15.

30. 335-3-16-.01. Definitions--335-3-16-.01(o) and (bb) state that the Director will maintain a list of emission units determined to be insignificant and trivial. Alachem agrees that such lists are important and will be helpful in facilitating the permitting process. Alachem does not at this time have recommended additions to the proposed insignificant and trivial lists, but believes that additions to the existing proposed lists are best made on a case-by-case basis during the permitting process.

Alachem notes that laboratories are included in ADEM's list of insignificant activities which are essentially exempt from the

requirements of Chapter 335-3-16. However, some of our member companies feel that laboratories and research and development facilities should be specifically mentioned in the regulations as being separate from the major source which they support.

Alachem requests that the following language be added as a new subparagraph (3) of the definition of "Major Source:"

(3) Notwithstanding the preceding source categories, emissions from any research and development/laboratory operation that supports a separate product line or segment of business shall be considered as a separate and discrete stationary source in determining whether such operations constitute a major source subject to the operating permit requirements. Except where a research and development laboratory/laboratory operations by themselves constitute a major source, such operations will be exempt from permit requirements.

31. 335-3-16-.03. Applicability--335-3-16-.03(2)(a) states that non-major NSPS and NESHAPs sources will be exempt from the ADEM Operating Permit Program. Alachem supports this exemption of non-major sources.

32. 335-3-16-.04. Permit Application Requirements--335-3-16-.04(8)(c)9. states that insignificant activities will be exempted from all provisions of the Operating Permit rule, with the exception of being listed in the permit application. Trivial activities will be exempt from all provisions of the rule. Alachem supports the exemption of these activities, but cannot determine if fees must be paid on the insignificant emissions.

Alachem requests ADEM exempt insignificant emissions from fees.

33. 335-3-16-.05. Permit Content--335-3-16.05(13) states the requirements for inclusion of alternate operating scenarios in operating permits. Alachem appreciates the ADEM's intentions to allow anticipated operating scenarios to be identified as required in 40 CFR 70.6(a)(9). Because our member companies consider this provision to be one of the most important elements in ensuring an efficient and workable permit program, we believe that additional specifically would be helpful to the regulated community.

Alachem requests that the following language be used in place of the proposed language at 335-3-16.05(13):

(13) The owner or operator of any stationary source required to obtain an operating permit may submit a description of all reasonably anticipated operating scenarios for the stationary source as part of the permit application. The operating scenario descriptions shall:

(a) Contain emission information for each scenario and sufficient information for the ADEM to develop reasonable permit conditions defining each scenario.

(b) Allow the owner or operator of any stationary source which is permitted to operate under

different operating scenarios to change between operating scenarios without any notice to the ADEM but shall be required to maintain a log at the stationary source recording all changes of operating scenarios.

(c) Ensure that the terms and conditions of each such alternative operating scenario meet all applicable requirements and the requirements of this chapter.

(d) The permit shield authorized in these regulations shall extend to permit terms and conditions which allow such changes.

34. 335-3-16-.06. Federally Enforceable Requirements--335-3-16-.06 states that only permit terms required by the Federal Clean Air Act will be federally enforceable, while other provisions included in the permit will not be enforceable by the EPA and citizens. The regulated community is aware that operating permit applications will include information which will be subject to neither Federal nor state regulations. Alachem supports ADEM's intention to clearly state that this information will not be made federally enforceable by inclusion in the operating permit application.

35. 335-2-16-.08. General Permits--335-3-16-.08 rightly states that, after a general permit has been granted, other sources can submit requests to be covered under the same permit.

    Alachem requests that 335-3-16.08 state that ADEM will maintain a public list of general permits, much the same as the lists of insignificant activities (335-3-16-.01(o)). The general permit list should state the conditions and requirements needed to qualify for each general permit.

36. 335-3-16-.13. Permit Modifications or Amendments--335-3-16-.13 contains the requirements for permit modifications or amendments. Alachem believes that the inclusion of provisions for minor permit modifications in the ADEM regulation is extremely important, and supports the proposed requirements in general. However, we do not agree there is a need for an applicant to wait ten days after the submittal of a minor permit modification to make the process change. This delay is not required by Federal regulations and its purpose is unclear.

    Alachem requests that the ten day delay for making minor modifications under an operating permit be removed from 335-3-16-.13(3)(e).

37. General Comments--It is our understanding that ADEM intends to conduct workshops around the State to help the regulated community understand the requirements of the operating permit program. Alachem strongly encourages ADEM to do this, but also recommends that an Alabama Operating Permit Manual be prepared as a workshop handout.

    The permit manual, to include required forms and application preparation guidance, will surely be of immense help to both industry and ADEM, who should receive more accurate, complete applications as a result of the workshop training. We strongly encourage the ADEM to include industry representatives in the development of this document to insure it meets the needs of permittees.

    We certainly appreciate ADEM's efforts to call for applications in the most efficient manner possible. In general, we support the efforts to randomly select facilities and then spread out the workload. However, we would like the ADEM to consider allowing companies with high "rank" numbers the option of being included in the initial permitting cycle.

    There is no mention in the regulations of how confidential information in operating permit applications will be handled. The current system of stamping lines "Confidential" will be inconvenient, at best, due to the expected facility and process detail expected in the operating permit applications.

Alachem recommends that ADEM allow permittees (and encourage them in the Operating Permit Manual) to submit two applications, one containing only non-confidential information for inclusion in the public files, while the second contain the complete application required by ADEM's permitting engineers.

COMMENTS FROM OGDEN MARTIN SYSTEMS

38. General Comments 1.--The development of workshops focused on the final operating permit program requirements to aid the regulated community would be appreciated. A review of final permit application requirements prior to permit application submittal deadlines would also be beneficial.

    In addition, would it be possible for permittees to submit draft applications for review by the regulatory agency prior to the deadline for permit submittal for feedback purposes? This would ensure that applications submitted by the deadline are not deemed incomplete as a result of not understanding a portion of the application.

39. General Comments 2.--OMSH requests that ADEM prepare an Operating Permit/Air Toxic Application Guidance Manual, updated annually, to aid the regulated community in understanding the complexities of the new permitting programs. A cross reference between 40 CFR 70 and the State Operating Permit Rule would prove to be a valuable resource. When permittees know the process and are given resource information, it benefits both the affected source and ADEM.

40. General Comments 3.--OMSH requests that ADEM differentiate among strictly state, state interpreted federal requirements, and those federal requirements taken directly from the 40 CFR Part 70 regulations in the final Alabama Title V program rules. This differentiation could be accomplished by using a different font style or by underlining. This would also be a good technique to utilize in any guidance documents issued by ADEM.

41. General Comments 4.--Please clarify if ADEM expects existing, permitted facilities to resubmit information and reports that were submitted during the original permit process or subsequent permit renewals. Does ADEM intend to allow the application to cross reference relevant materials, if they are current and clear with respect to information required in the permit application? If so, this is not clearly stated in the proposed regulations.

42. General Comments 5.--Will the regulated community have an opportunity to comment on proposed source permit application forms prior to them being released in final form? If so, what will the public review process entail?

43. General Comments 6.--It would be helpful to understand ADEM's approach with regard to seeking interim or final approval for their program.

44. AC 335-1-7-.04 Fee Schedule.--It would be helpful if ADEM would provide an annual report on the effectiveness of the funding mechanism established under this section. OMSH supports the attempt by ADEM to minimize the financial impact of these fees on the regulated community.

45. AC 335-1-7.05 Payment of Fees--It is stated that failure to pay fees shall be cause for revocation of air permit (s). However, this section also provides some relief with regard to late payment. Please clarify the intent of this section.

46. AC 335-3-16-.01 Definitions--Please see comment #7 for proposed revised definitions for (o) "insignificant activities" and (bb) "trivial activities."

47. AC 335-3-16-.04(1) Permit Application Requirements--Please provide a definition of the "effective

date" for the program. It is unclear when sources are required to submit the application as required under the regulations. 40 CFR Part 70 regulations require that all affected sources submit applications within one year of the EPA approval of the State's program. This requirement was designed to provide a source with the reassurance that the State's operating permit program would not be significantly modified by the EPA during the permit application process.

48. AC 335-3-16-.04(7) Duty to Supplement or Correct Application--A concern arises with the language relating to the need to address additional requirements that may become applicable to the facility after a complete application has been submitted but prior to release of a draft permit. The time frame provided for final action by ADEM on a complete application does not substantially limit the window during which the facility must wait for a draft permit. Addressing of additional requirements could substantially increase the financial burden to both industry and the affected community.

49. AC 335-16-.04(8)(c)(1) Emissions - Related Information--Section 129(a)(4) of the revised Federal Clean Air Act (FCAA) was designed specifically to address air toxics and limitation of emissions for municipal waste combustion (MWC) sources. This section, which lists the following 11 parameters, should be referenced in Alabama's final state operating program:

1) NOx
2) SO_2
3) particulate matter, total
4) particulate matter, fine
5) opacity
6) HC1
7) CO
8) Cd
9) Hg
10) dioxins
11) dibenzofurans

The above parameters should be the only ones the facility should be required to quantify as part of the permit application process.

50. AC 335-16-.04(8)(c)(9) Permit Application Requirements - Exemptions--OMSH requests that ADEM differentiate further between trivial/exempt and non-exempt categorically insignificant activities. This approach, which is consistent with the intent of 40 CFR Part 70.5(c) and the "off-permit" operational flexibility provisions cited in 40 CFR Part 70.4(b)(14), was developed fully in Minnesota's now final Part 70 operating permit program. (Other states in the process of developing similar lists as part of their respective operating permit programs include Oregon, Indiana, Hawaii and New Jersey.) For your consideration, OMSH proposes that the following text be inserted into section (c)(9):

(i) Insignificant activities shall be exempted from the provisions of this rule, except for the provision that the significant activity be listed in the permit application. Insignificantly activities required to only be listed (non-exempt in the permit application include the following:

Fuel Use

* Space heaters fueled by natural gas or propane.
  Furnaces, boilers, and incinerators:
* Infrared electric ovens;
* Fuel burning equipment of less than 500,000 Btu/hr capacity except where total capacity of equipment exceeds 2,000,000 BTU/hr when operated by one stationary source.

Fabrication operations:

* Equipment used exclusively for forging, pressing, drawing, spinning, or extruding hot metals. Finishing operations
* Open tumblers with a batch capacity of 1000 pounds or less.

Storage Tanks

* Fuel oil storage tanks with a capacity of less than 2000 gallons.

Cleaning Operations

* Commercial laundries, not including dry cleaners.

Laboratory Emissions

Miscellaneous Activities

* Degreasing operations that do not exceed 145 gallons per 12 months;
* Equipment used exclusively for packaging lubricants or greases;
* Equipment used for hydraulic or hydrostatic testing;
* Brazing, soldering or welding equipment;
* Blueprint copies and photo processes;
* Equipment used exclusively for melting or application of wax; and,
* Nonasbestos equipment used exclusively for bonding lining to brake shoes.

(ii) Trivial activities shall be exempted from all the provisions of this rule. Insignificant activities (trivial) not required to be listed in the permit application include the following:

Fuel Use

* Fueling operations associated with storage tanks less than or equal to 2000 gallons;
* Liquefied petroleum gas (LPG) or petroleum fuels for heating equipment rated at no greater than 100,000 BTU/hr;
* LPG or petroleum fuels used in mobile equipment.

Housekeeping/Maintenance

* High pressure washing of buildings or equipment;
* Maintenance of equipment inclusive of fluid changes and/or repair of equipment which involves welding, cutting, brazing, grinding, and/or drilling;
* Housekeeping, inclusive of sweeping, cleaning, washing, painting, grinding, cutting, and/or welding;
* Landscaping and groundskeeping activities;
* Tarring of roofs and paving of parking lots;
* Degreasing operations of less than or equal to 55 gallons per 12 months.

Storage tanks/vessels/containers

* Pressurized tanks and vessels;
* Storage tanks/vessels holding non-volatile material;
* Storage tanks/vessels of capacity less than or equal to 500 gallons holding volatile material;

* Off-loading activities associated with storage tanks;
* Containers (drums, pails, etc.) sized less than or equal to 55 gallons;
* Gas cylinders with capacity of less than or equal to 225 cubic feet.

Operations

* Cooling tower evaporation;
* Releases of steam and water vapor from boiler operations;
* On-site mobile vehicle use;
* Office activities;
* Use of fire extinguishers and/or fire suppression systems.

51. AC 335-3-16-.04(9)(b) Certification Language--Does the certification language provided completely satisfy the requirements for a certification statement per the FCAA?

52. AC 335-3-16-.05(2)(b) Permit Duration--OMSH supports the issuance of a twelve year permit of solid waste incineration units combusting municipal waste pursuant to section 129(e) of the revised FCAA. Title V as it relates to municipal waste combustors (MWCs) is discussed here and should be cited in Alabama's final state operating permit program.

53. AC 335-3-16-.05(3)(b) Record Keeping--Does the monitoring information have to be hard copy (i.e. paper) or may it be stored on computer?

54. AC 335-3-16-.05(3)(c)(1) Monitoring & Reporting Requirements--Can the annual compliance certification documentation also serve as the second semiannual report for that year? When are the reports due within the calendar year and what period is provided for generation of the report (i.e. 30 or 60 days after the end of the reporting period)?

55. AC 335-3-16-.05(3)(c)(2) Supplemental Monitoring & Reporting Requirements--Due to the various scenarios related to conditions which may cause deviations from permit requirements, a reporting time longer than 48 hours is requested. A minimum of five working days (exclusive of weekends and recognized ADEM observed holidays) is recommended. Please clarify whether this report shall be verbal or written.

56. AC 335-3-16-.05(12) Emissions Trading--It would be helpful if existing emission trading programs were described in this section or, at a minimum, in the administrative portions of the AC cited. This action will facilitate greater overall compliance by affected sources.

57. AC 335-3-16-.06 Federally Enforceable Requirements--OMSH supports awareness by ADEM that the permit provides guidelines for operation. By establishing the "rules of the game", both the facility and ADEM are better able to determine the responsibilities of both parties. OMSH requests that ADEM differentiate between state and federal requirements in the final regulations. This differentiation could be accomplished by using a different font style or by underlining.

58. AC 335-3-16-.08(2)(d) Compliance Requirements--Dependent upon the sampling and/or monitoring desired by ADEM, a facility may need to modify existing capital equipment (i.e. additional access ports for sampling) at its own financial risk. In addition, modifications could involve labor costs related to accomplishing the work. Given this reality, OMSH would like to see language which recognizes and would limit the potential financial impact to a facility.

59. AC 335-3-16-.08(5)(d) Compliance Requirements--In order to ensure that the appropriate party receives the submitted documentation in a timely manner, the addresses and contact departments for both ADEM and the EPA should be provided.

60. AC 335-3-16.10 Permit Shield--EPA developed the concept of the permit shield to protect the regulated community from enforcement actions being taken as a result of changes made by the states in interpreting the federal regulations after the date that the final operating permit was issued. Without this protection, the regulated community would be vulnerable to potentially damaging and costly actions while in fact complying with all permit limitations/conditions agreed to at the time the permit was issued. Given the above, OMSH requests that the State include a permit shield in any Title V permit in cases where the permittee requests that a shield would be drafted in a checklist format and provided to ADEM along with the permit application form. OMSH would like to suggest the following alternative language for section 335-3-16-.10(1)(a):

    (1) Except as provided in this rule, the Department shall include in an Operating Permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

        (a) The source provides a permit shield agreement, to be reviewed by the regulatory agency, which itemizes each specific requirement that is applicable as well as those requirements that are not applicable to the permittee.

61. AC 335-3-16-.11 Exceptions to Violations of Emissions Limits--Due to the various scenarios related to emergency or upset conditions, a longer reporting time is requested. Given the disruption of utilities and phone service that is typical of such severe weather, a minimum of ten working days (exclusive of weekends and recognized Agency observed holidays), rather than the 48 hours provided for in thee draft program, is recommended.

62. AC 335-3-16-.13(5) Reopening for Cause--Does a public participation mechanism exist when a permit is reopened and amended? OMSH supports a notice period by which a source is notified that the permit is to be reopened.

COMMENTS FROM KIMBERLY-CLARK

63. General Comments 1.--The intent of the operating permit program is to capture all regulatory requirements for air emissions at one site in one document. Since the inception of the permit program in the Clean Air Amendments of 1990, however, the emphasis of the program seems to have shifted to one of developing comprehensive and complex emission inventories for the smallest of sources. This emphasis has the potential to overload the resources of the regulated community and regulatory agencies to the detriment of the main goal of the Act, which is to improve and maintain air quality nationwide.

    Kimberly-Clark strongly supports ADEM's practical approach to focus on significant air emissions by developing specific lists of trivial and significant sources. We also support the concept of using NCASI emission factors to screen pulp and paper mill sources for significance and using NCASI emission factors to routinely update the Department's trivial and insignificant source list.

64. General Comments 2.--Kimberly-Clark supported the collection of permit fees ahead of the EPA deadline to allow ADEM to hire and train the staff necessary to administer the permit program. We believe it is entirely appropriate, therefore, to provide the fee credit schedule in paragraph 335-1-7-.04(6). We appreciate this fair-handed approach.

65. General Comments 3.--Hydrogen sulfide was not included in the Clean Air Act as a hazardous air pollutant, as suggested in Appendix G to Chapter 335-3-16. We believe it should be removed from Appendix G.

66. General Comments 4.--The definition of "Regulated Air Pollutant" in paragraphs 335-1-7-.02(g)3

and 335-3-16-.01(w)3 is not clear to us. In particular, is a pollutant for which a new source performance standard has been promulgated considered a "regulated air pollutant", even if the source of the pollutant is not covered by a new source performance standard? If a pollutant is considered "regulated" because a NSPS has been promulgated for it, even though its source is not subject to a NSPS, do NSPS's for all source categories apply or just the category from which the pollutant is emitted?

COMMENTS FROM GENERAL MOTORS

67. 335-3-14-.03: Standards for Granting Permits--Subsection (1)(h)(2)(iv) requires the permittee to submit notice, within 2 working days, of exceedances due to an emergency situation. This subsection should be modified so as to clarify that notice of such exceedances would be due within 2 working days of the time when the source learned of or had knowledge of the exceedances. An element of "knowledge" is particularly appropriate for an emergency since during such an occurrence, there would likely be more urgent situations requiring attention than reading a strip-chart recording from a small industrial boiler. Likewise, subpart 335-3-16-.11(2)(b)(4) should be modified so as to read: "The permittee submitted notice of the emergency to the permitting authority within 2 working days of knowledge of the time when emission limitations were exceeded due to the emergency".

    Similarly, subsection 335-3-16-.05(3)(c)(2) should also be amended so as to include an element of knowledge. More specifically, this section should read,"...to report deviations from permit requirements within 48 hours of knowledge of such deviations,...".

68. 335-3-14-.05: Air Permits Authorizing Construction in or Near Non attainment Areas--Subpart (2)(j)(3)(ii) allows an increase or decrease in actual emissions be credible in accounting for "Net Emissions Increases" only if the increase or decrease "occurs after the effective date of this Section". General Motors believes Alabama's program would be more consistent with intent of the federal program, and indeed the approach of numerous other states, by crediting increases and decreases that have taken place after the effective date of the federal Clean Air Act, e.g., November 15, 1990.

69. 335-3-16-.02: General Provisions--Subsection (8), General Standards for Granting Operating Permits, allows the Director to deny an operating permit if the applicant "does not show that every article, machine, equipment, or other contrivance..." will operate without causing a violation of the Administrative Code. General Motors believes this section should be clarified so as to specifically provide an exemption for "insignificant activities". Although such an exemption may already be **implied** by virtue of the definition of "insignificant activities", more specificity in the rule now may help avoid confusion in the future over the application of this section. More specifically, in an effort to clarify this subsection, General Motors recommends adding the following: "(8)(g) no provision in this subsection shall be construed as applicable to insignificant sources as defined in 335-3-16-.01(11)(o).

    Also, under (f)(1), this section requires the Director to deny an Operating Permit "where he determines that the construction **and operation** of such Stationary Source will interfere with attaining or maintaining any primary or secondary" NAAQS standard [emphasis added]. This provision is absolutely inappropriate in the context of the operating permit program since Title V was clearly intended to impose procedural and not substantive requirements on a source. Furthermore, Title V was certainly not intended to provide authority to shut-down an existing source that was lawfully operating within its permit. Concerns over NAAQS are more appropriately handled in the context of New Source Review (NSR) Programs and State Implementation Plans. Subsection (f) should be deleted or at the very least modified so as to address the denial of NSR permits and not operating permits.

Similarly, under (f)(2), the Director is empowered to "deny a permit application if the applicant operates other permitted facilities or Stationary Sources within the state which are in substantial noncompliance". Again, this provision would only be appropriate for an NSR permit application, not an application for an operating permit. Instead, the operating permit program already contains sufficient provisions for handling noncompliance situations through submission of appropriate compliance plans and schedules.

70. 335-3-16-.05: Permit Content--Subpart 11 requires that a permit is ineffective if the permittee has not paid all fees required. This is an overly drastic measure, particularly since there could be numerous plausible and potentially excusable reasons that a source may not have paid all fees required (e.g., clerical error, a dispute with the Agency over the amount due, etc.).

71. 335-3-16-.06 Federally enforceable requirements--This section should states that federal requirements in the permit will be federally enforceable and that state requirements will only be enforceable by the state. General Motors strongly supports this concept, but believes this section should be amended so as to clarify that the permit itself will clearly distinguish which provisions are federally enforceable and which provisions are solely enforceable by the state. This could be accomplished by changing the wording of this section so that it reads as follows: "All terms in a permit that are required to be part of a permit pursuant to the Act are federally enforceable by EPA, the Department and citizens in general, **and these terms shall be specified in the permit as being federally enforceable and distinguished from** those provisions of a permit that are not required under the Act and are considered to be solely state permit provisions and consequently, not federally enforceable by EPA and citizens in general." Also, the second line of this section contains a typographical error. The word "be" should be "by", e.g., "federally enforceable by EPA".

72. 335-3-16-.14: Permit Review by EPA, Affected States and the Public--Subpart (3)(b) should be amended so as to specifically provide that the permittee receive a copy of the proposed permit, prior to, or at least at the same time as the proposed permit is being submitted to EPA.

    Also, somewhere this section should be modified so as to reflect the concept that comments submitted, particularly by the public, must be germane to the Title V permit or the permit process in order to have any substantive or procedural impact.

COMMENTS FROM G.E. APPLIANCES

73. 335-3-16-.05, Permit Content-- It is recommended that the following be added at 335-3-16-.05(13):

    (a.) The permit shield authorized in these regulations shall extend to permit terms, conditions and provisos which allow changes in operational flexibility.

    (b.) That operational flexibility permits allow the owner or operator of a permitted stationary source to change operating scenarios without notification to ADEM provided records of changes and materials involved are maintained.

    (c.) That the term "alternative scenarios" shall include short term trial runs of materials which were not anticipated in original permits, but which are expected not to increase emissions.

    (d.) That alternative scenarios which involve trials of materials designed or intended to reduce regulated emissions are exempt.

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74. 335-314-1.03 (2) (a) Definitions--This term was modified in Chapter 14, however, the term was not modified in Chapters 15 and 16. Recommend that Chapters 15 and 16 be modified to read like Chapter

14.

75. 335-1-7-.02 (g)--The word "air"has been inserted. The final part 70 regulations uses the term "regulated air pollutant" to describe the information required for the permit applications and permits, and the term "regulated pollutant" (for presumptive fee calculation) for use in calculating fees. See Federal Register (Tuesday, July 21, 1992) page 32264.

76. Under Stack Heights in 7 (i), pages 14-28, 15-9 and 16-17. "For sources....(Rules 335--3-14-.04), the word "and" should read "an" excessive concentration..."--Typo

77. Chapter 15 (page 15-10) (b) first line. Should "Air Permit" be "Synthetic Minor Operating Permit"?

78. In Chapters 15 and 16 it appears that references to Chapter 14 should be to Chapter 15 and 16 in the respective chapters.

79. 335-3-16-.01 (e) 2. (page 16-2)--The word "Determination" should be "Deterioration".

80. 335-3-16.01 (q) (page 16-4)--The "Major Source" definition references subparagraphs 1, 2, or 3. However, there are only two (2) subparagraphs to follow.

81. Also, the definition of a major source as defined in Part D of Title I (Nonattainment) is not referenced in the regulation. See Federal Register (Tuesday, July 21, 1992) page 32296, 70.2 Major Source (3).

82. 335-3-14-.04 (page 14-37)--"40-CFR-51.18" should read "40-CFR-51.160"

83. 335-3-15-.04 (page 15-12)--(3) New Potential Major Sources

84. Should date be November 15, 1994 instead of November 15, 1995?

85. 335-3-16-01 (b) (page 16-1)--Should "affected" be added in front of "units"?

86. 335-3-16-.01 (m) (page 16-6)--On the second line "sources' potential to emit" should read "source to emit".

87. 335-3-16-.01 (aa) (page 8)--Should "Section 112 (b) of the Act" read "Appendix G"?

88. 335-3-16-.01 (bb) (page 8)--The last line left out a. "to be a trivial activity".

89. 335-3-16-.02 (8) (c) (page 10)--Should safety be required or considered in this regulation?

90. 335-3-16-.05 (11) (page 16-27)--Recommend that you change the words "is not effective" to read "is not valid"

COMMENTS FROM DUPONT COMPANY

94. 335-1-6-.03, Exemptions--335-1-6-.03 does not mention Synthetic Minor Operating Permits nor General Permits. It is not clear how application and emission fees apply to these permits.

    DuPont requests that ADEM exempt Synthetic Minor Operating Permits and General Permits from application fees.

95. 335-3-10, 335-3-11, and Appendix D--DuPont supports the proposed revisions.

96. 335-3-14-.01, General Provisions--335-3-14-.01(7)(a)1.(i) restates an ADEM definition of "Greenfield Site" which is not totally consistent with the industry understanding.

DuPont suggests that ADEM clarify that a "greenfield site" is a site which is undeveloped, not an area at an existing site where a new facility will be constructed. The current definition "a new development or the initial operation of a new facility" could be interpreted to include new construction at an existing facility.

97. 335-3-14-.03. Standards for Granting Permits--DuPonts supports adoption of the new 335-3-14-.03(1)(h), "Exceptions to violations of emissions limits." The adoption of this provision will correct the current undesirable situation in which all excess emissions of regulated air pollutants are air rule violations, regardless of whether or not they are the result of truly unforeseen and unpreventable events. Although there is general agreement that the ADEM has exorcized appropriate enforcement discretion in this area, this situation is an uncomfortable one for industry. This rule should benefit ADEM as well: decisions to excuse/enforce will be supported by code at a time when public scrutiny and demand for explanations is rapidly increasing.

335-3-14-.03. Standards for Granting Permits--Similar emission exemption rules are included in 335-3-15.04(5), and 335-3-16-.11. However, the wording in all three regulations is not the same: for example, 335-3-14 mentions load changes as being potentially exempt, as does 335-3-16, but 335-3-15 does not include this example.

DuPont requests that the excess emission exemption wording in 335-3-14 be standardized in 335-3-15 and 335-3-16.

98. 335-3-14-.04, Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration Permitting (PSD)--DuPont supports the removal of asbestos, beryllium, mercury, vinyl chloride, reduced sulfur compounds, arsenic, and benzene from the list of significant emissions included in 335-3-14-.04(2)(w)(1). DuPont

believes that emissions of these chemicals will be best managed under the developing toxics program required by the Federal Clean Air Act Amendments of 1990, which clearly indicate that Congress intended for the EPA to regulate emissions of hazardous air pollutants by maximum achievable control technology, not by PSD review.

99. 335-3-15-.02. General Provisions--335-3-15-.02(8)(h)4.(i) refers to a "Subparagraph; 335-3-15-.03(1), which is not included in the proposed rule.

DuPont requests that 335-3-15-.02(8)(h)4.(i) be revised to show the correct subparagraph.

335-3-15-.02(8)(h)4--Presents some reasons which could result in revocation of Synthetic Minor Operating Permits:

"4. failure to allow employees of the Department upon proper identification to:

(i) enter any premises where any article, machine, equipment, or other contrivance described in Subparagraph 335-3-15-.03(1) is ...

(ii) have access to and copy any records ...

(iii) inspect any monitoring equipment ...

(iv) have access to and sample any discharge ...

DuPont understands the need for access to a permittee's premises to assure compliance with the applicable requirements of the operating permit, but there are situations which may not be safe to allow personnel at any time. We note that 335-3-16-.07(2) contains a similar requirement, but

includes the words "at reasonable times", which is in agreement with 40 CFR 70.6(c)(2).

DuPont requests that subparagraphs 335-3-14.02(4)(e) [not proposed for revision] and 335.3-15-.02(8)(h)4 be worded similarly to 335-3-16-.07(2), for safety and for consistency.

100 335-3-15-.04. Synthetic Minor Operating Permit Requirements--This subparagraph does not state the application process which will be used by ADEM to process these permits. There is no mention of fee applicability information like that found in 335-3-16-.04(8) or modification procedures, to include transfer of ownership, like those found in 335-3-16-.13.

DuPont requests that a Synthetic Minor Operating Permit application process and modification procedures, similar to those found in Chapter 335-3-16, be included in Chapter 335-3-15.

101 335-3-16-.01. Definitions--335-3-16-.01(o) and (bb) state that the Director will maintain a list of emission units determined to be insignificant and trivial. DuPont agrees that such lists are important and will be helpful in facilitating the permitting process. DuPont does not at this time have recommended additions to the proposed insignificant and trivial lists, but believes that additions to the existing proposed lists are best made on a case-by-case basis during the permitting process.

102 335-3-16-.03. Applicability--335-3-16-.03(2)(a) states that non-major NSPS and NESHAPs sources will be exempt from the ADEM Operating Permit Program. DuPont supports this exemption of non-major sources.

103 335-3-16-.04. Permit Application Requirements--335-3-16-.04(8)(c)9. states that insignificant activities will be exempted from all provisions of the Operating Permit rule, with the exception of being listed in the permit application. Trivial activities will be exempt from all provisions of the rule. DuPont supports the exemption of these activities, but cannot determine if fees must be paid on the insignificant emissions.

DuPont requests ADEM exempt insignificant emissions from fees.

104 335-3-16-.05. Permit Content--335-3-16-.05(13) states the requirements for inclusion of alternate operating scenarios in operating permits. DuPont appreciates the ADEM's intentions to allow anticipated operating scenarios to be identified as required in 40 CFR 70.6(a)(9). Because we consider this provision to be one of the most important elements in ensuring an efficient and workable permit program, we believe that additional specifically would be helpful to the regulated community.

DuPont requests that the following language be used in place of the proposed language at 335-3-16-.05(13):

(13) The owner or operator of any stationary source required to obtain an operating permit may submit a description of all reasonably anticipated operating scenarios for the stationary source as part of the permit application. The operating scenario description shall:

(a) Contain emission information for each scenario and sufficient information for the ADEM to develop reasonable permit conditions defining each scenario.

(b) Allow the owner or operator of any stationary source which is permitted to operate under different operating scenarios to change between operating scenarios without any notice to the ADEM but shall be required to maintain a log at the stationary source recording all changes of operating scenarios.

(c) Ensure that the terms and conditions of each such alternative operating scenario meet all applicable requirements and the requirements of this chapter.

(d) The permit shield authorized in these regulations shall extend to permit terms and conditions which allow such changes.

105 335-3-16-.06. Federally Enforceable Requirements--335-3-16-.06 states that only permit terms required by the Federal Clean Air Act will be federally enforceable, while other provisions included in the permit will not be enforceable by the EPA and citizens. The regulated community is aware that operating permit applications will include information which will be subject to neither Federal nor state regulations. DuPont supports ADEM's intention to clearly state that this information will not be made federally enforceable by inclusion in the operating permit application.

106 335-2-16-.08. General Permits--335-3-16-.08 rightly states that, after a general permit has been granted, other sources can submit requests to be covered under the same permit.

DuPont requests that 335-3-16-.08 state that ADEM will maintain a public list of general permits, much the same as the lists of insignificant activities (335-3-16-.01(o)). The general permit list should state the conditions and requirements needed to qualify for each general permit.

107 335-3-16-.13. Permit Modifications or Amendments--335-3-16-.13 contains the requirements for permit modifications or amendments. DuPont believes that these requirements are consistent with the intention of the Federal Clean Air Act, believes them to be reasonable, and supports them as-proposed.

108 General Comments--It is our understanding that ADEM intends to conduct workshops around the State to help the regulated community understand the requirements of the operating permit program. DuPont strongly encourages ADEM to do this, but also recommends that an Alabama Operating Permit Manual be prepared as a workshop handout.

The permit manual, to include required forms and application preparation guidance, will surely be of immense help to both industry and ADEM, who should receive more accurate, complete applications as a result of the workshop training. We strongly encourage the ADEM to include industry representatives in the development of this document to insure it meets the needs of permittees.

There is no mention in the regulations of how confidential information in operating permit applications will be handled. The current system of stamping lines "Confidential" will be inconvenient, at best, due to the expect facility and process detail expected in the operating permit applications.

DuPont recommends that ADEM allow permittees (and encourage them in the Operating Permit Manual) to submit two applications, one containing only non-confidential information for inclusion in the public files, while the second contain the complete application required by ADEM's permitting engineers.

COMMENTS FROM KERR-MCGEE CHEMICAL CORPORATION

109. pg-3.(l)

PROPOSED CHANGE: ADD "Fugitive emissions from individual components within a facility may be collectively counted as one emission unit based on their relationship to the associated process."

REASON: Defining each individual valve or flange as an emission unit would be a tremendous permitting, record-keeping and reporting burden

110. pg. 16-3, (l)

PROPOSED CHANGE: None

REASON: Strongly support the non-aggregation provisions of the CAAA'90

111. pg. 16-3, (o)

PROPOSED CHANGE: INSERT"...has the potential to emit < a net change of > less than 5 tons..."

REASON: Flexibility

112. pg. 16-5, line 3:

PROPOSED CHANGE: ADD any < regulated > air pollutant

REASON: Specificity

113. pg. 16-5, (xx):

PROPOSED CHANGE: ADD a definition of chemical process plant

REASON: Clarification

114. pg. 16-6, (xxii):

PROPOSED CHANGE: DEFINE petroleum as crude or product storage

REASON: Specificity

115. pg. 16-7, (w) 1:

PROPOSED CHANGE: ADD "except those specifically excluded in the EPA definition of VOC per 40 CFR 51.165(1)(X1X)

REASON: In particular methane and ethane (major components of natural gas) should be excluded because they are not photo-chemically reactive and do not contribute to ozone formation. This provides consistency with EPA and other state programs.

116. pg. 16-7, (w) 5:

PROPOSED CHANGE: ADD "Accidental release of chemicals specified in Section 112(r) shall not be counted toward the applicability threshold of a source to Title V permitting."

REASON: Extreme difficulty in quantifying and predicting accidental releases.

117. pg. 16-25,(3)(a)1:

PROPOSED CHANGE: DELETE "All" ADD "alternate test methods requested by applicant shall be approved or disapproved by the Department within 60 days."

REASON: Flexibility

118. pg. 16-25,(3)(a)2:

PROPOSED CHANGE: DEFINE 'periodic' as 'annual' and 'reliable' as 'consistent'

REASON: Specificity

119. pg. 16-26,(c)1:

PROPOSED CHANGE: CHANGE 6 months to 12 months

REASON: Consistency with 335-3-16-.04(8)(i)(3) [on pg. 16-23, (i)3] and with 335-3-16-.07(5)(a) [on pgs. 16-29 & 30]

120. pg. 16-26,(c)1:

PROPOSED CHANGE: ADD "However, the reports may be submitted at any time within the reporting period.

REASON: Flexibility to reduce untimely work load.

121. pg. 16-26,(c)1 & 2:

PROPOSED CHANGE: REPLACE "deviation with 'exceedances"

REASON: A deviation can be above or below a limit. Only values above limits should be of concern.

122. pg. 16-26,(4)

PROPOSED CHANGE: INSERT '...exceeding <on an annual basis> any allowances..."

REASON: This allows the Title IV source to temporarily exceed allowances as long as emissions trading credits are bought later the same year.

123. pg. 16-28,335-3-16-.06, line 2:

PROPOSED CHANGE: REPLACE "'be' with 'by'"

REASON: Typo?

124. pg. 16-29,(2)(a):

PROPOSED CHANGE: ADD "...premises <during normal working hours> where..."

REASON: Reasonableness

125. pg. 16-33,newItem 3:

PROPOSED CHANGE: ADD "The owner or operator of the location of the temporary source has no liability whatsoever for violations of the permit by the owner of the temporary source. Emissions from the temporary source shall not be included in the emissions total at the location of the temporary source.

REASON: Separate accountability for emissions total would eliminate the need for multiple repetitive permits for the same source.

126. pg. 16-34,(2)(b)4:

PROPOSED CHANGE: DELETE "the permittee submitted notice of the emergency to the permitting authority within 2 working days" INSERT "the permittee shall provide verbal notice of the emergency to the Department within 2 working days, followed by written confirmation notice within 5 working days..."

REASON: Time requirements

127. pg. 16-34,(2)(b):

PROPOSED CHANGE: ADD "Emissions resulting from an emergency are authorized to exceed technology-based emission limits."

REASON: Protects prudent source operators against unreasonable enforcement for unavoidable emissions.

COMMENTS FROM REGION IV/NEELEY

128 335-3-10 and 335-3-11--We have no adverse comments. The state now needs to issue a formal request for delegation of authority.

129 335-3-14.01 (1)(f)--This section states that "Upon completion of the construction, an owner or operator familiar...," removing the requirement that the person submitting the letter be a professional engineer. Then, where the paragraph continues on page 3, the rule references the professional engineer. Either the requirement that the person be a professional engineer should remain, or all the following references to a professional engineer should be changed to owner or operator. Also, the beginning of the paragraph references an owner or operator's professional license. This reference should have been eliminated when references to professional engineer were removed. Owners/operators do not necessarily hold professional licenses.

130 335-3-14-.01 (7)--This section must be changed to comply with the Code of Federal Regulations 40 CFR 51.161 which gives provisions for public availability of information.

131 335-3-14-.03(2)(a)5.(iii)--Although this section was previously approved and not submitted as a revision, we recommend that this paragraph be amended to allow EPA approval of stack heights demonstrated by a fluid model or a fluid study.

132 335-3-14-.05(2)--The definition for federally enforceable must be added. {See 40 CFR 51.165 (a)(1)(xiv)}.

133 335-3-14-.05(2)(b)--Where the term "enforceable" is used, it must provide for enforcement by both state and federal agencies. This can be accomplished either by inserting the provisions for enforcement by state and federal agencies in this section or by defining enforceable, in section 335-3-14-.05(2), to provide for enforcement by both state and federal agencies.

134 335-3-14-.05(2)(e)--Same as comment #7.

135 335-3-14-.05(2)(e)(4)--Same as comment #7.

136 335-3-14-.05(2)(j)(5)(ii)--Same as comment #7.

137 335-3-14-.05(3)(c)--The wrong section was referenced. Offset Standards are in paragraph 335-3-14-.05(7) not in paragraph 335-3-14-.05(6).

138 335-3-14-.05(4)(c)(1)--EPA no longer implements an NSR rural ozone policy, therefore this exemption is not approvable.

139 335-3-14-.05(4)(d)--The following statement is from the March 11, 1991, memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards which provides the NSR Program Transitional Guidance. "The area designation in effect on the date of permit issuance by the reviewing agency determines which regulations apply to that permit." This section must be modified to comply with this requirement or deleted.

140 335-3-14-.05(7)(f)--Same as comment #7.

141 335-3-14-.05(9)--Any emissions banking must be consistent with the emissions inventory used to demonstrate attainment.

142 335-3-14-.05(12)(b)--This list contains all categories except Fossil Fuelfired Steam Electric Plants of more than 250 Million BTU/hr Heat Input. This category must be included.

143 335-3-15-.02(9)(c)--incorrectly references 335-3-14-.03(2)(b)4. and 335-3-14-.03(2)(b)1. as the definition of a major modification. The correct citations for the definition of major modification are 335-3-14-.05(2)(d) and 335-3-14-.04(2)(b)1. Paragraphs 335-3-14-.03(2)(b)4. and 335-3-14-.03(2)(b)1. do not exist.

144 335-3-15-.02 (9)(f)--incorrectly references 335-3-14-.03A(3)(a)5.(ii), which does not exist. The correct references are 335-3-14-.03(2)(a)5.(i) and 335-3-14-.03(2)(a)5.(ii).

145 335-3-15-.04(d)--the sentence states "The department shall act within a reasonable time...." This language is inadequate. The language should be more definitive and a specific time limit should be imposed.

146 335-3-15-.04(5)(b)3--the sentence states "The Director shall be the sole determiner of whether an emergency has occurred." This sentence should be amended to allow EPA the authority to assist in the decision process regarding whether an emergency has occurred.

147 335-3-15-.05(c)--the sentence states "The department shall provide at least 15 days for the public comment." For consistency, the quantity of days allotted for public comments should be a specific number.

148 General--Chapter 15 was reviewed using the June 28, 1989, Federal Register notice [54 FR 27274] which lists five criteria for operating permit programs to ensure they are federally enforceable. The following five comments address whether the five criteria are met by Alabama's submittal.

149 Chapter 15 does not meet the first requirement which states that the State operating permit programs must be submitted to and approved by EPA into the SIP. This revision must be approved into the SIP to be considered federally enforceable. However, with this prehearing submittal, we believe it is the intent of ADEM to submit these revisions as a part of the SIP.

150 Chapter 15 does not meet the second requirement which is as follows: "The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provides that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally

enforceable" by EPA." Provisions

151 Chapter 15 does not entirely meet the third requirement which is as follows: "The State operating permit program requires that all emissions limitations, controls, and other requirements imposed by such permits shall be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP and that the program may not issue permits that waive, or make less stringent any limitations or requirements contained in or issued pursuant to the SIP, or that are that are otherwise "federally enforceable" (e.g. standards established under sections 111 and 112 of The Act)." This requirement can be met in 335-3-15-.02(8)(a) if at the end of the sentence the phrase "or any federal requirement" is added.

152 Chapter 15 does not meet the fourth requirement which is as follows: "The limitations, controls, and requirements in the operating permits are permanent, quantifiable, and otherwise enforceable as a practical matter." Provisions must be added which meet this requirement.

153 Chapter 15 meets most of the fifth requirement which provides for public participation. Alabama must add the provision that EPA be provided, on a timely basis, with a copy of each proposed (or draft) permit prior to the hearing and the final permit intended to be federally enforceable. Timely notice would be 30 days or more.

154 APPENDICES D AND G--We have no adverse comments.

COMMENTS FROM REGION IV/HARPER

155 Definitions-The applicable definitions of 40 CFR § 70.2 are located in ADEM Admin. Code R. 335-3-16-.01.--Page 16-1: The "Affected States" definition under paragraph 335-3-16-.01(c)1. of this section should be changed to read, "...that are contiguous to the State in which an operating permit, permit modification or permit renewal...."

156 Paragraph 335-3-16-.01(b)--has a capital "T" in Title IV", however most of Chapter 16 uses a lower case letter "t." One or the other should be used for consistency.

157 Page 16-2--The "Applicable Requirement" definition under paragraph 335-3-16-.01(e)4. of this section should be changed to read, "...requirement in ADEM Admin. Code...."

158 Paragraph 335-3-16-.01(e)1--should be amended to include the acronym CFR. This acronym is cited later throughout Chapter 16.

159 The definitions in Section 335-3-16-.01(e)(3)--should refer to Section 111 of the Act. The following language under 40 CFR § 70.2 should be used: "any standard or other requirement for Section 111 of the Act, including Section 111(d)."

160 For the same reasons stated above, the language in Section 335-3-16-.01(e)(4) should include reference to Section 112--Language similar to "any standard or other requirement under Section 112 of the Federal Act, including any requirement concerning accident prevention under Section 112(r)(7) of the Federal Act" should be used.

161 Page 16-3 and 16-9--We recommend that the definitions for "Insignificant Activity" and "Trivial Activity" under paragraphs 335-3-16-.01(o) and (bb) indicate that the Director has consulted with EPA prior to establishing an alternative threshold for such activities. Additionally, EPA strongly recommends that the lists of insignificant and trivial activities be incorporated into Chapter 16.

162 Page 16-4--We recommend that the definitions for "Interim Approval" be changed to read, "...means a conditional approval of Chapter 335-3-16 by the Administrator that may extend the

implementation deadline of these regulations...."

163 Page 16-4 thru 16-6--Under paragraph 335-3-16-.01(q), ADEM should incorporate the definition presented in subsection (3) of the major source definition of 40 CFR § 70.2, since the reclassification of a nonattainment area may occur over time (i.e., "marginal" to "moderate").

164 Page 16-6--Under paragraph 335-3-16-.01(q)(2)(xxvii), the provision should read, "All other...promulgated under Section 111 and 112 of the Federal Act,...."

165 EPA recommends that ADEM provide a definition for "Synthetic Minor Source" and provide a cross-reference to the applicable chapter.

166 General Provisions--The applicability portions of 40 CFR § 70.3 are located in ADEM Admin. Code R. 335-3-16-.03.

167 Page 16-9--Paragraph 335-3-16-.02(1) should be changed to read, "...owner or operator obtains an Operating Permit or a Synthetic Minor Operating Permit prior to a...."

168 Similarly, in the following paragraph, the beginning sentence should be changed to read, "A person who has been granted an Operating Permit or a Synthetic Minor Operating Permit for any article, machine,...."

169 We recommend that the third sentence of paragraph 335-3-16-.02(4)--be changed to read, "The Director may issue...."

170 Page 16-11 Paragraph 335-3-16-.02(8)(c)--should be revised to read, "The Director may also require the applicant to install, use, and maintain such monitoring equipment or methods, including enhanced monitoring methods prescribed under Section 504(b) or Section 114(a)(3); sample such...."

171 Page 16-12: Paragraph 335-3-16-.02(8)(f)1--should be amended to clarify the term "modification." It is unclear what types of modifications are implied here. Also, this paragraph should be amended to clarify what criteria or procedures (i.e., modeling) are needed to comply with this provision.

172 Page 16-14: Paragraph 335-3-16-.02(10)(a)3--should describe the permit event or activity (e.g., application date) that is compared to the date the stack came into existence (e.g. contractual obligation date, date construction began).

173 Page 16-15: Paragraph 335-3-16-.02(10)(a)5.(ii)(I)(II)--should be amended to allow EPA (in addition to the Director) the authority to require the use of a field study or fluid model to verify stack height for the source.

174 Page 16-16: Paragraph 335-3-16.02(10)(a)5.(iii)--should be amended to require EPA approval of stack heights demonstrated by a fluid model or a fluid study.

175 Page 16-18: Paragraph 335-3-16-.02(10)(c)--incorrectly references 335-3-14-.03(2)(b)4 and 335-3-14-.03(2)(b)1 as the definition of a major modification. The correct citations for the definitions of major modification are 335-3-14-.05(2)(d) and 335-3-14-.04(2)(b)1. Paragraphs 335-3-14-.03(2)(b)4 and 335-3-14-.03(2)(b)1 no longer exist.

176 Applicability - The applicability portions of 40 CFR § 70.3 are located in ADEM Admin. Code R. 335-3-16-.03.--Page 16-19: The applicability reference presented at 40 CFR § 70.3(a)(2) should be incorporated into paragraph 335-3-16-.03(1).

177 Likewise, the applicability references presented at 40 CFR § 70.3 (c) and (d) should be incorporated into paragraph 335-3-16-.03 (2).

178 Permit Applications - Standard information required in permit applications are outlined in ADEM Admin. Code R. 335-3-16-.04 and 40 CFR § 70.5. Page 16-20: For clarification, a portion of paragraph 335-3-16-.04(6)--should be rephrased to read, "...the date the application has been deemed complete and the date the final permit is issued...."

179 Paragraph 335-3-16-.04(2)--should be revised to read, "...preconstruction review under title I of the Act...."

180 Page 16-21: Paragraph 335-3-16-.04(8)(c)3.--should be revised to read, "...the applicable standard reference test method, or an alternative method approved by the Department's Director and the Administrator;"

181 Page 16-22: We recommend that paragraph 335-3-16-.04 (8)(c)9.(i)--be reworded to state, "Insignificant activities as defined under this chapter shall be exempted from the provisions of this rule provided they are listed in the permit application."

182 With respect to trivial activities exempted under subparagraph (ii) of this section, 40 CFR § 70.5 (c) requires that a list of all activities exempted--because of size or production rate--be included the permit application. Subparagraph (ii) should be changed to reflect this requirement.

183 We recommend the following language be used to clarify paragraph 335-3-16-.04(8)(h)3., "...the source will, on a timely basis, meet applicable requirements that become effective during the permit term unless a more detailed...."

184 Permit Content-Standard permit requirements are outlined in ADEM Admin. Code R. 335-3-16-.05 through 335-3-16-.11, and 40 CFR § 70.6 Page 16-28: Paragraph 335-3-16-.06--should inform the permittee of any terms specifically identified by the Department as being "STATE ONLY" (meaning they are not required under the Act or any of its applicable requirements) and not federally enforceable.

185 Page 16-30: As required under 40 CFR § 70.6 (d) (1), paragraph 335-3-16-.08--should indicate that if a source is later determined to have not qualified for the general permit, the source shall be subject to enforcement action for operating without an operating permit.

186 Page 16-33: Paragraph 335-3-16-.09 (2)--should probably be merged into subparagraph (1) (b).

187 Page 16-34: As required under 40 CFR § 70.6 (g) (3) (iv), paragraph 335-3-16-.11(2)(b)4.--should state that the notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

188 Permit Issuance, Renewal, Reopenings and Revisions--Sections of the regulations discussing permit issuance, renewal, reopenings and revisions are located at ADEM Admin. Code R. 335-3-16-.12, 335-3-16-.13, and 40 CFR § 70.7. Page 16-35: Paragraph 335-3-16-.12(1)--should provide the permittee with a general checklist of actions which must be fulfilled before an initial permit is issued (i.e., receipt of complete application, public participation, affected States, no EPA objection, etc.) as outlined in 40 CFR § 70.7 (a).

189 16-36: Since there is not a one-to-one correlation between the ADEM Administrative Code and 40 CFR § 70.6, the last sentence of paragraph 335-3-16-.13(1)(a)6.--should be changed to incorporate paragraphs 335-3-16-.05 through 335-3-16-.11.

190 We further recommend that paragraph 335-3-16-.12 (2)(c)--reflect the right of the Administrator to terminate, revoke, and reissue a permit as authorized under Section 505(e) of the Act.

191 Page 16-37: Paragraph 335-3-16-.13(2)--should be changed to read, "Flexible Permit Changes (i.e., Section 502 (B)(10) changes)...."

192 Additionally, this section does not address acid rain sources. Similar language to paragraph 335-3-16-.13(1)(b)--should be inserted.

193 Page 16-38: In order to relieve the source from submitting a complete application for each minor modification, paragraph 335-3-16-.13(2)(b)--should be modified to indicate that only information related to the proposed change be included as outlined under 40 CFR § 70.5(a)(2).

194 Permit review by the EPA and affected States-ADEM Admin. Code R. 335-3-16-.14 and 40 CFR § 70.8 discuss permit review by EPA and affected States. Page 16-41: Paragraph 335-3-16-.14(2)(b)--should be restated, "[t]he Department shall respond in writing to each Affected State and to the Administrator its reasons for...."

195 Page 16-41: Paragraph 335-3-16-.14(3)(a)--provides that if EPA timely objects to a proposed permit, the Department may issue a permit under Alabama's Air Pollution Control Act. Section 505(b)(3) of the Act mandates that a permitting authority, upon receipt of EPA's veto of a proposed permit, may not issue the permit unless it is revised accordingly. Alabama's proposed regulation appears to contravene the federal requirement which could result in program disapproval.

196 The first sentence of paragraph 335-3-16-.14(3)(a)--should be changed to read, "[i] f EPA objects in writing within 45 days of receipt of a proposed permit and all necessary supporting information, the Department...."

197 Page 16-42: The reference in paragraph 335-3-16-.14(4)(b)--should be substituted with the word "chapter".

COMMENTS FROM APPCO

198. Off-Permit Provisions

Introduction.-- Based on the rationale presented below, APPCO urges that ADEM amend its public notice draft of ADEM 335-3-16 to provide authorization for off-permit changes. As the basic legal justification for including the off-permit change provision, APPCO cites the reasonably straightforward language of 40 C.F.R. §§ 70.4(b)(14) and (b)(15):

> (b) . . . The [operating permit program] submission shall contain the following:
>
> * * * * *
>
> (14) If a State allows changes that are not addressed or prohibited by the permit, other than those addressed in paragraph (b)(15) of this section, to be made without a permit revision, provisions meeting the requirements of paragraphs (b)(14)(i)-(iii) of this section. . . .
>
> > (i) Each such change shall meet all applicable requirements of and shall not violate any existing permit term or condition.
> >
> > (ii) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under the provisions adopted under § 70.5(c) of this part. . . .

(iii) The change shall not qualify for the [permit] shield . . . .

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(15) Provisions prohibiting sources from making, without a permit revision, changes that are not addressed or prohibited by the Part 70 permit, if such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.[1]

Status under Public Notice Draft.-- ADEM's proposed operating permit rules, if adopted in their present form, might require source owners who make substantial changes in operations at permitted sources to apply for and obtain minor permit modifications under ADEM 335-3-16-.13(3).[2] These requirements might also apply to changes in operations that would qualify for exemption as either trivial activities or insignificant activities at the time of permit application. Since minor permit modification procedures require U.S. EPA review and approval, see ADEM 335-3-16-.13(3)(d), use of the minor permit modification procedure would not only be resource-intensive, but would necessitate potentially excessive U.S. EPA involvement in the details of administering the already-complex operating permit program. The advantages of the off-permit provisions are clear, as demonstrated in the following chart:

ADMINISTRATIVE FORMALITIES OF OFF-PERMIT PROCEDURES	**ADMINISTRATIVE FORMALITIES OF MINOR PERMIT MODIFICATIONS**
Contemporaneous notice describing off-permit change to permitting authority and EPA, except where change is "insignificant."	Formal application describing change and resulting emissions and suggested draft permit language, certified for accuracy and completeness.
Record describing changes at the source resulting in emissions of "regulated air pollutants" that are subject to "applicable requirements," but not otherwise regulated by the permit.	Permitting authority to send notice of minor permit modification request to EPA and "affected states" within 5 days of receipt of "complete" request.
Record of emissions resulting from the off-permit change.	Permitting authority unable to issue final minor permit modification until 15 days after passage of 45-day EPA/affected states review period or 90 days, whichever is later.
* * * * * *	Permitting authority must explain in writing its refusal to accept **all** recommendations of EPA and affected states concerning minor permit modification.

[1]ADEM's proposal tracks 40 C.F.R. § 70.5(c) in making special provision for "insignificant" and "trivial activities," ADEM 335-5-16-.01(o), -.01(bb), -.04(8)(c).9, as they exist at the time of permit application. These comments will address the ambiguity of ADEM's public notice draft concerning insignificant **changes** in operations during the term of the permit.

[2]As discussed in detail below, use of the term "substantial" in conjunction with changes is intended to address changes that are greater than "insignificant" but less than "significant" within the meaning of federal PSD and NSR regulations.

* * * * * *	EPA objection to minor permit modification request could result in its ultimate denial.

The preamble to the final operating permit rules speaks unmistakably to EPA's commitment to the concept of off-permit change authorization:

> Although many commentors challenged the legality of this concept under Title V, EPA believes that Title V was not intended to prohibit [off-permit] changes. The Agency continues to believe that [the Clean Air Act] allows certain changes at a permitted facility that need not be incorporated into the permit until renewal.
>
> * * * * *
>
> Finally, the regulations make it clear that a State may choose to prohibit off-permit operations as a matter of state law. **EPA believes, however, that off-permit operations are an important source of flexibility under Title V.** Therefore, the regulations provide that any State prohibition of off-permit operations will not be enforceable as matter of Federal law under the Act.

57 Fed. Reg. 32269-70. (emphasis added).

Scope of Off-Permit Changes.-- While EPA's statement of policy concerning its encouragement of off-permit change authorization is clear and a matter of record, there exists some ambiguity concerning the scope of changes that off-permit change authorization might cover. On the one hand, the cross-reference in 40 C.F.R. § 70.4(b)(14) to the "insignificant activity" language in 40 C.F.R. § 70.5(c) implies that **changes** in activities that fall within ADEM's "insignificant" and "trivial" standards are off-permit changes. On the other hand, EPA guidance material suggests that substantial increases in emissions at a permitted emissions unit that fall beneath "significance" levels for attainment areas, as set forth in 40 C.F.R. § 52.21(b)(23), also qualify as an off-permit change.[3] APPCO takes the position that off-permit change authorization is intended to include a broad scale of operational changes, ranging from the trivial or insignificant changes to substantial changes that fall beneath a numerical Title I significance level.

(I) Insignificant and Trivial Changes.-- While APPCO strongly favors the adoption of off-permit operation authorization covering the entire trivial-to-substantial change spectrum, it acknowledges that ADEM's regulatory response may vary, depending upon where a change in emissions falls along this spectrum. Nonetheless, APPCO recommends specifically that changes in activities which would qualify as either insignificant or trivial activities at the time of the permit application be treated as falling within

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[3] **Can a source install a new paint line with emissions of 39 tons per year under the 502(b)(10) changes?**

> No. This may be an off-permit change, but it is not a section 502(b)(10) change because it does not contravene an express permit term. It could be an off-permit change (if the permitting authority allows such changes) if the permit did not specifically address or disallow it, and it would be added to the permit upon renewal. **It presumptively would require a preconstruction review permit under a State minor NSR program.**

"Questions and Answers on the Requirements of Operating Permits Program Regulations," U.S. EPA (July 7, 1993). (emphasis added).

the definition of "insignificant activities" and "trivial activities."

APPCO views regulatory treatment for insignificant and trivial changes as appropriately falling into one of three categories:

(a) "Insignificant" changes that are insignificant because they involve net changes in potential emissions from activities at the permitted source of less than five tons per year for criteria pollutants or less than 1,000 pounds per year for non-criteria pollutants;

(b) "Insignificant" changes that are insignificant because they involve changes in activities that are classified as insignificant activities on the listing maintained by the Director; and

(c) "Trivial" changes that are trivial because they involve changes in activities that are classified as trivial activities on the listing maintained by the Director.

Under the recommended regulatory amendment, ADEM will receive notice of "type (a)" insignificant changes and will be able to incorporate the "operational reconfigurations" resulting from "type (a)" changes at permitted sources in subsequent rounds of permitting. APPCO's recommendations specifically contemplate that notice of "type (a)" insignificant changes be sent to ADEM, just as required for "insignificant activities" under ADEM 335-3-16-.04(8)(c).9.(i).[4] ADEM of course retains the right to reopen a permit for cause under proposed ADEM 335-3-16-.13(5)(a).4 if there is reason to believe that an accumulation of "type (a)" insignificant changes warrants formal steps to conform the operating permit to actual operations. Specific language changes to accomplish this result are set forth below.

(ii) Substantial Changes.-- For off-permit changes that involve emission increases that are "greater than insignificant" but below Title I significance levels, APPCO recommends that ADEM consider adopting "revision" procedures that are **not** incorporated within the federally enforceable portion of the operating permit program **nor** within the state implementation plan. APPCO urges that the final operating permit rules clearly contemplate the adoption of "state-only" provisions in 40 C.F.R. § 70.6(b)(2). Language to carry out this approach is set forth below.

Internal EPA Dispute.-- It has come to APPCO's attention that there exists a disagreement within EPA concerning the mechanism by which states can implement the off-permit provisions of 40 C.F.R. §§ 70.4(b)(14)-(15). As we understand it, the issue arises in the context of state attempts to declare all below-significance level emission increases as "off-permit" for the purposes of the federally approved operating permit program, and to fashion state permitting procedures to address these "minor modifications." The legal issue arises from reading together the provisions of 40 C.F.R. § 70.4(b)(15), which excludes from off-permit treatment any change that constitutes a "modification" under **any** provision of Title I of the Clean Air Act, and the language of Clean Air Act § 110(a)(2)(D), as amended. This statutory provision sets forth the requisite components for acceptable state implementation plans (SIP's) and requires the following concerning stationary sources:

> a program to provide for . . . regulation of the modification and construction of any stationary source within the areas covered by the [SIP] as necessary to assure that national ambient air quality standards are achieved, including a permit program as required [to implement PSD and nonattainment NSR requirements].

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[4]Insignificant changes that are insignificant only because they do not involve potential net increases above the five TPY and 1,000 PPY thresholds in ADEM 335-3-16-.01(o) are appropriately subject to notice requirements. Even though insignificant activities must be identified in the permit application, 40 C.F.R. § 70.5(c) does not require notice of "type (b)" insignificant changes, i.e., changes that involve insignificant activities that are identified on the listing maintained by ADEM.

It is APPCO's further understanding that some within EPA believe that, since a state construction permit program is inevitably part of the SIP, authorization for an increase in source emissions in accordance with a such a SIP-approved program is a "modification" for the purposes of the SIP, and thus a "modification" for the purposes of Title I. According to this reasoning, a state operating permit program provision which reserves to the state the right to review operational changes under a SIP-approved state permit program is a legally deficient means for authorizing off-permit changes because implementation of the state minor permit program would be a Title I "modification."[5]

Response.-- First, this argument conflicts with the natural, common sense reading of the Title V regulations which obviously intended "modification" as used in 40 C.F.R. § 70.4(b)(15) to refer to a threshold level of emissions, as in the PSD program, rather than mere state processing of permit-related documents under a SIP-approved permit program. Second, and more substantial, there is no legal requirement under the Clean Air Act for ADEM to include the regulatory provisions under which it processes an off-permit change as part of the Alabama SIP, or to deal with such changes as SIP revisions. Neither the text of the Clean Air Act nor EPA's policy discussion of the relationship of the operating permit program to the SIP suggest that the operating permit program, or state regulations adopted in support of the operating permit program, are part of the SIP. On the contrary, the operating permit program and the SIP are independent of one another.[6]

(I) Non-SIP Procedures.-- There is nothing to prevent ADEM from crafting state minor permit procedures so as not to become part of the Alabama SIP, particularly provisions that are designed to serve only the operating permit program and not the attainment and maintenance of national ambient air quality standards.[7] Doing so would not change in any manner the fundamental and indisputable requirement of Clean Air Act § 110 that the SIP attain and maintain ambient air quality standards.

However, APPCO also recognizes that attempting to draft such language at this time would add to the considerable pressure to adopt an acceptable operating permit program by November 15, 1993. For this reason, it may be more prudent at this time simply to adopt an operating permit program that authorizes off-permit changes for purposes of the federal operating permit program but retains state jurisdiction over minor modifications, by cross-reference to the "state-only" administrative process in ADEM 335-3-14-.01 through -.03. Developments within EPA can be monitored to determine whether the broad view of "Title I modification" will ultimately become final EPA policy. If not, the basis for a workable off-permit program will already be in place.[8] If so, the adoption of non-SIP minor source modification procedures

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[5]This position is clearly contrary to the position of the drafters of the "Questions and Answers" quoted above.

[6]*See, e.g.,* 57 Fed. Reg. 32258, which discusses the relationship of the SIP to the operating permit program:

> The SIP remains the basis for demonstrating and ensuring attainment of the national ambient air quality standards (NAAQS). The permit program collects and implements the requirements contained in the SIP as applicable to the specific permittee.

That states have chosen to process modifications under SIP procedures signifies nothing more than the requirement that the SIP must include procedures for processing PSD and nonattainment NSR applications and modification requests, and that "use" of these SIP-approved procedures is a convenient mechanism for processing minor modifications.

[7]In particular, this additional language would not derogate from or interfere with the SIP-required provisions of ADEM 335-3-14 on pre-construction permits or ADEM 335-3-15 on synthetic minor permits. The suggested language would be **in addition to** these previously proposed regulatory chapters.

[8]APPCO urges that ADEM consider adopting regulatory language that will allow for expedited treatment of off-permit changes in appropriate cases. For

can be considered, when there are fewer time constraints.

(ii) Irrelevance to Trivial and Insignificant Changes.-- Any uncertainty concerning "less-than-significant," substantial changes should not be a deterrent to extending the exemption for trivial and insignificant activities to include changes that satisfy the criteria for triviality and insignificance. First, EPA's preamble to the final operating permit rules indicates that source owners have a certain degree of freedom, simply by virtue of operating a business, to make operational changes:

> Nothing in this section [Clean Air Act § 502(b)(10)] is meant to imply any limit on the inherent flexibility sources have under their permits. A permittee can always make changes, including physical and production changes, that are not constrained under the permit. For example, a facility could physically move equipment without providing notice or obtaining a permit modification if the move does not change or affect applicable requirements or federally-enforceable permit terms or conditions. Or a painting facility with a permit that limits the VOC content of its paints can switch paint colors freely as long as each color complies with the VOC limit in the permit.

57 Fed. Reg. 32267.

Parties close to the operating permit rulemaking have described the sort of change described above -- and authorized under the final operating permit rules -- as a "way-off-permit" change. Extension of ADEM's insignificant and trivial activities lists to address operational changes would cover precisely this sort of change. Moreover, 40 C.F.R. § 70.5(c) recognizes that off-permit changes that are "type (b)" insignificant changes do not require contemporaneous notice either to EPA or to the permitting authority.[9] It is seemingly impossible to square EPA's explicit regulatory language with the theory that insignificant or trivial changes must somehow involve SIP-related procedures.

Accordingly, the issue concerning whether utilization of a state minor permit program to authorize off-permit changes is a modification should have no bearing on authorization of trivial or insignificant changes. Beyond the somewhat theoretical notion of "inherent flexibility" is the practical consideration that these changes do not in the normal course invoke SIP revision procedures. ADEM has presumable chosen to exempt these changes from the operating permit program in part because of their minimal ambient air quality impacts. (Were these sorts of changes to present a risk of compromising NAAQS, which the SIP is intended to protect, it is difficult to imagine that ADEM would characterize these changes as either "trivial" or "insignificant.") The provisions of the state operating permit program are wholly independent of the SIP, so that the authorization of trivial and insignificant changes have no direct or indirect relationship to Title I, and should therefore not be classified as modifications for the purposes of Title I. In short, they should remain fully qualified for off-permit treatment, despite the internal dispute

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this reason, reference to the terms of administrative permit amendments and minor permit modifications are is made in the recommended language set forth below. APPCO wants to make it clear that this is not a recommendation that off-permit changes be submitted to EPA for approval.

Instead, the **process** established by these two elements of the federal operating permit program might used, conditioned by appropriate "state-only" language, as an avenue to address off-permit changes in Alabama, in the appropriate circumstances. **The extent to which off-permit changes may be authorized without prior approval is a matter that lies within ADEM's sound discretion.**

[9]As discussed above, APPCO distinguishes between "type (a)" insignificant changes, which are determined against numerical thresholds in ADEM 335-3-16-.01(o) and are **not** identified on ADEM's list of insignificant activities, from "type (b)" insignificant changes, which **are** identified on ADEM's list of insignificant activities. In APPCO's view, 40 C.F.R. § 70.5(c) addresses only the latter.

at EPA. For this reason, APPCO believes that ADEM is fully justified in clarifying that trivial and insignificant activities may include changes in activities that satisfy the triviality and insignificance criteria without awaiting resolution of the dispute within EPA.

Off-Permit Provisions -- Specific Recommended Language Changes:

I. CHANGE THE DEFINITION OF "INSIGNIFICANT ACTIVITY" IN ADEM 335-3-16-.01(o) BY ADDING AN ADDITIONAL SENTENCE REGARDING INSIGNIFICANT CHANGES:

"Insignificant Activity" generally means any air emissions or air emissions unit that has the potential to emit less than 5 tons per year of any criteria pollutant or less than 1,000 pounds per year of any pollutant listed in Appendix G of ADEM Admin. Code R. 335-3. "Insignificant activity" shall also mean any change in the activity or level of operation of an air emissions unit that has the potential to increase net emissions of any criteria pollutant by less than 5 tons per year or any pollutant listed in Appendix G of ADEM Admin. Code Chap. 335-3-16 by less than 1,000 pounds per year. The Director may determine that certain types of or classes of units or changes may be considered insignificant at higher emission levels, or that, due to the nature of the pollutant(s) emitted, a unit may be considered significant at a lower emission rate. The Director shall maintain a list of air emissions or air emission units, or changes in air emissions, which are considered to be insignificant without a determination of emission levels by the permittee."

II. AMEND THE DEFINITION OF "TRIVIAL ACTIVITY" IN ADEM 335-3-16-.01(bb) BY ADDING AN ADDITIONAL SENTENCE REGARDING TRIVIAL CHANGES:

"Trivial Activity" means any air emissions from a unit that is considered inconsequential by the Director. "Trivial activity" shall also mean any change in the activity or level of operation of an air emissions unit that is considered inconsequential by the Director. The Director shall maintain a list of air emission units, or changes in air emissions, that have been determined to be trivial activity."

III. AMEND ADEM 335-3-16-.04(8)(c).9 TO INCLUDE INSIGNIFICANT AND TRIVIAL CHANGES WITHIN THE SCOPE OF THE EXEMPTION:

9. Exemptions

(i) Insignificant activities, including insignificant changes, shall be exempted from the provisions of this rule, except for the provision that the insignificant activity be listed in the permit application. Notice shall be sent to the Director in the event of insignificant changes that increase potential net emissions of criteria pollutants by less than 5 tons per year or any pollutant listed in Appendix G of ADEM Admin. Code Chap. 335-3-16 by less than 1,000 pounds per year and that are not identified on the list of insignificant changes in emissions as provided in ADEM Admin. Code R. 335-3-16-.01(o).

(ii) Trivial activities, including trivial changes, shall be exempted from all of the provisions of this rule.

IV. AMEND ADEM CHAPTER 335-3-16 TO INCLUDE A NEW SUBSECTION ON "OFF-PERMIT CHANGES":

335-3-16-.__ Off-Permit Changes

(1) Any change at a source holding an operating permit which is not addressed or prohibited in the federally enforceable terms and conditions of the permit may be designated by the owner or operator as an off-permit change, and may be made without revision to the federally

enforceable terms and conditions of the operating permit, provided that the change:

(a) shall meet all applicable requirements;

(b) does not violate any federally enforceable permit term or condition;

(c) is not subject to any requirement or standard under title IV of the Clean Air Act; and _

(d) is not a modification under title I.

(2) Designation of a change as state-only affects only the federal requirements for processing of the change under the federal operating permit program. The owner or operator must comply with all applicable state permitting and preconstruction review requirements. Any change designated as state-only will be treated as permit revision under state permitting requirements and shall be processed in accordance with ADEM Chapter 335-3-14 **[or, within the discretion of the Director, in accordance with the administrative permit amendment provisions in ADEM 335-3-16-.13(1) or the minor permit modification provisions in ADEM 335-3-16-.13(3), except that the provisions of ADEM 335-3-16-.13(3)(d) shall not apply.]**

(3) The owner or operator of any permitted source who plans to make a change meeting the criteria set forth in this section may submit a request that the Director process the change application as an off-permit change, in accordance with paragraph (2) of this section.

(4) Any application pertaining to a change designated by the applicant as an off-permit change shall be submitted by the applicant to EPA in fulfillment of the obligation to provide written notice, provided, that no change meeting the criteria for an insignificant activity or trivial activity is subject to the procedures set forth in this section.

199. Emissions Quantification

A critical practical concern is the amount of emissions quantification that must be performed at Alabama's numerous emissions units. (This concern carries over to annual quantification for permit fee purposes as well.) The federal regulations do not require screening of all significant emissions units for all of the hazardous air pollutants identified in Clean Air Act § 112. Such an approach would be both impractical and unduly costly, with no commensurate environmental benefit. EPA's Office of Air Quality Planning and Standards (OAQPS) agrees, and has acknowledged that some reasonable bounds must be placed on emissions quantification.

A recent policy memorandum from Lydia Wegman, Deputy Director of OAQPS, pushes for rationality in required emissions quantification:

> The EPA believes that . . . the Title V permit program offers the flexibility for efficient implementation of [its] requirements. This function includes providing information about emissions of a [significantly broader range of] pollutants, through the permit application process, even if the particular pollutant is not currently required to be controlled at the individual source. . . .
>
> **The EPA understands the need for States to establish de minimis thresholds for emissions reporting purposes in permit applications and recognizes that the particular thresholds selected by individual States can vary based on their air quality management needs and professional judgment.** The EPA will work with States to develop Part 70

programs that will best meet their program needs. [emphasis added.]

APPCO believes it is essential for ADEM to go forward in crafting an emissions screening methodology that makes good environmental and economic sense. APPCO offers such a methodology. It starts from the premise that the "insignificance" levels set forth in ADEM 335-3-16-.01(o) of the draft are sensible thresholds. Additionally, the insignificance thresholds can be appropriately used in differentiating those emission levels which warrant quantification from those which do not. APPCO proposes that ADEM use these insignificance thresholds in conjunction with the best available emissions factors developed by the pulp and paper industry for various mill emission units. The function of these emission factors in APPCO's proposed methodology are two-fold:

(a) These emission factors can be used to determine those hazardous air pollutants which are **not** emitted in either detectable or quantifiable levels from specific mill emission units; and

(b) They provide a basis for calculating emission levels at Alabama's mills for the pollutants whose emissions can be quantified. In other words, multiplying the best available emissions factors and process capacities at comparable mills, one can readily calculate whether individual mills emit "regulated non-criteria air pollutants" in quantities greater than the 1,000 pounds per year threshold. Likewise, these emission factors can be used to quantify emissions above the 1,000 pounds threshold for reporting and permit fee purposes.

APPCO proposes that its members be required to quantify as "significant" only those regulated non-criteria air pollutants which exceed the 1,000 pounds threshold as calculated above. This methodology can be instituted through guidelines and day-to-day practice, and need not be incorporated as a distinct subject in this rulemaking. APPCO believes that the approach that it is endorsing is entirely consistent with the exemptions proposed in ADEM 335-32-16-.04(8)(c).9 for "insignificant activities" and "trivial activities."

200. Operational Flexibility Provisions

APPCO commends ADEM for including in the proposed operating permit program rules some of the various provisions from the final federal operating permit rules collectively known as the "operational flexibility" provisions. Based on our review, it appears that ADEM 335-3-16-.05(12) corresponds to 40 C.F.R. § 70.6(a)(8); that ADEM 335-3-16-.05(13) corresponds to 40 C.F.R. § 70.6(a)(9); and that ADEM 335-3-16-.13(2) corresponds to 40 C.F.R. § 70.4(b)(12)(i).

In reviewing these provisions, APPCO has detected what it believes to be two operational flexibility provisions in the final federal operating permit rules which are not incorporated in ADEM's proposed rules. These are the provisions at 40 C.F.R. § 70.4(b)(12)(iii)("trading beneath a cap") and 40 C.F.R. § 70.6(a)(10)("emissions trading at permit applicant's request"). The language of in these C.F.R. provisions, as noted in EPA's August 5, 1993 "Part 70 Operating Permit Program Review Checklist," is mandatory and is an integral part of EPA's operational flexibility scheme.

To address the mandatory requirement in 40 C.F.R. § 70.4(b)(12)(iii), it is recommended that a new subsection be added to 335-3-16-.13, and to read as follows:

<u>ADEM 335-3-16-.13(3):</u>

<u>(3) Emission trades within stationary sources to comply with an emissions cap in the permit:</u>

<u>(a) If a permit applicant requests it, the Department shall issue permits allowing for the</u>

trading of increases and decreases in emissions solely for the purpose of complying with a federally approved emissions cap established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Department shall not be required to include in the permit provisions required in this subsection any emissions units for which emissions are not quantifiable or for which there are not replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable procedures.

(b) The Department shall not authorize a change to be made under this subsection if it is a change that is _

1. A significant modification within the meaning of ADEM Admin. Code Chapter 335-3-161.13(4).

2. A modification within the meaning of Title I of the Clean Air Act.

3. A change that would exceed the emissions allowable under the permit (whether expressed in terms of an emissions rate or in terms of total tonnages).

(c) The permittee shall provide advance written notice of any change under this subsection of at least 7 days to the Director and to the Administrator describing the change to be made, the date on which the change is to occur, any changes in emissions, and any permit terms and conditions that may be affected. The permittee shall maintain a copy of the notice on file with the permit, and the Department shall place a copy of the notice with the permit in the public file.

(d) The permit shield provided in ADEM Admin Code Section 335-3-16-.10 shall extend to changes authorized in this subsection.

To address the requirement expressed in 40 C.F.R. § 70.6(a)(10), it is recommended that ADEM add a new subsection, ADEM 335-3-16-.07(14), to read as follows:

ADEM 335-3-16-.07(14):

(14) Emission trading requested by the permit applicant

(a) If requested by the permit applicant, the Department shall issue an operating permit that contains terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility to the extent that applicable requirements authorize such increases and decreases without case-by-case approval of each emissions trade and under the following circumstances:

1. Such terms and conditions authorizing increase and decreases in emissions shall include all terms required under ADEM Admin. Code R. 335-3-16-.05 and ADEM Admin. Code R. 335-3-16-.07.

2. Such terms and conditions meet all requirements of ADEM Admin. Code Chap. 335-3-16 and all applicable requirements.

(b) The permit shield authorized by ADEM 335-3-16-.10 shall extend to terms and conditions providing for increases and decreases in emissions as authorized in this subsection.

Incorporation of the operational flexibility provision set forth in 40 C.F.R. § 70.4(b)(12)(ii) is discretionary with the state permitting authority. One possible use of this optional flexibility provision is to

accommodate "netting" of increases and decreases of emissions. Historically, netting has been understood as a process by which existing facilities could avoid undergoing PSD review, e.g., in the case of "contemporaneous" shutdown and startup of emission units within a "major source" under Title I, Part C. Netting also allows regulatory authorities to concentrate manpower and resources on physical and operational changes that result in significant net **increases** in emissions. APPCO submits that exclusion of netting transactions should also invoke minimum Title V permitting authority involvement. Even though the concept of "netting" at existing sources was not mentioned in either the proposed or final federal operating permit rules, this concept appears to be at the core of 40 C.F.R. § 70.4(b)(12)(ii).[10]

ADEM's regulations governing PSD review are an integral part of the Alabama SIP. See 40 C.F.R. § 52.50(c)(58)(i). Additionally, current ADEM 335-3-14-.04(2)(c).1 defines "net emissions increase" to take into account contemporaneous **decreases** in emissions at a source to the extent that they are creditable. In effect, this authorization of netting is a SIP-based provision recognizing the trading of increases and decreases in emissions, the focal point of 40 C.F.R. § 70.4(b)(12)(ii). For example, after the effective date of the operating permit program, the shutdown of an 60 TPY emissions unit in a major within five years of the startup of a 45 TPY emissions unit should not trigger operating permit modification procedures any more than it triggers Title I new source review requirements, assuming that the net reduction is creditable. In accordance with the maxim that "the greater includes the lesser," shutdown of a smaller 40 TPY emissions unit contemporaneously with the commencement of operation of a below-significance-level 20 TPY replacement emissions unit should not trigger operating permit program modification requirements as well.

Again, EPA's rules and policy statements have not addressed this perceived linkage of Title I and Title V. This is understandable, since both Title I new source review and Title V modifications are themselves extremely complex matters, and interrelating the two would introduce further policy complications, at a comparatively early stage in the evolution of the Title V permit program. This does not mean, however, that such linkages will not be recognized in the future. With the passage of time and accumulation of experience with the permit program, it is a near certainty that such connections will be made. Certainly the policy considerations that authorize netting for purposes of Title I speak just as clearly to the authorization of netting as a means for avoiding the mutual burdens of permit modification procedures.

Critical to APPCO's argument is the fact that no change under 40 C.F.R. § 70.4(b)(12)(ii) can be made without prior notice to the permitting authority. Specifically, notice of any change authorized by the proposed language below must be given to ADEM at least seven days in advance of the change. The permitting authority is therefore in a position to object to a change under this provision before the fact. Additionally, based on this notice, the permitting authority has a basis for permit reopening or other remedial steps if it is determined after the fact that the change does not meet the criteria of 40 C.F.R. § 70.4(b)(12)(ii). Finally, the change in the configuration of the permitted source will be recognized upon permit renewal.[11] Accordingly, APPCO urges that ADEM include this provision, and recommends that it be included as a new subsection to ADEM 335-3-16-.13, to read as follows:

<u>ADEM 335-3-16-.13(4):</u>

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[10]The substance of 40 C.F.R. § 70.4(b)(12)(ii) is to exempt from Title V modification processing those changes at permitted sources which increase and decrease emissions among emission units, where the applicable SIP provides for such trades without an operating permit modification.

[11]APPCO acknowledges further that the provisions of ADEM 335-3-14 may have to be amended in order to accommodate the precisely stated requirements of 40 C.F.R. § 70.4(b)(12)(ii). This fact should not dissuade ADEM from including this optional operating permit program provision in the current rulemaking. **Eventually, EPA will be forced to address the netting question from the perspective of the permit program, and it is likely to turn to a regulatory provision already on the books to resolve it.**

(4) Emission trades within stationary sources provided for by the state implementation plan.

(a) In cases where the permit does not expressly provide for emissions trades within the source, the permittee may make changes based on trades which increase and decrease emissions among emissions units, in accordance with applicable implementation plan which authorize such trades without a permit revision.

(b) The permittee shall provide written notice to the Director and the Administrator at least seven days in advance of the proposed change. The written notification shall provide such information as may be required by the state implementation plan, including when the change will occur, a description of each change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the state implementation plan, and the pollutants subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the state implementation plan and that provide for the emissions trade. The permittee shall maintain a copy of the notice on file with the permit, and the Department shall place a copy of the notice with the permit in the public file.

(c) The permit shield provided in ADEM Admin. Code Section 335-3-16-.10 shall not extend to any change authorized in this subsection. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to the requirements of the state implementation plan authorizing the emissions trade.

201. "State-Only" Permit Requirements

ADEM's proposed rules attempt to deal with the issue of "state-only" requirements in general language in ADEM 335-3-16-.06, stating that "those provisions of a permit that are not required under the [Clean Air] Act are considered to be state permit provisions and consequently, are not federally enforceable by EPA and citizens in general." While the thrust of this phrasing is clear, it may not accomplish what ADEM apparently intends. In commenting upon the relevant portion of the federal operating permit rules, EPA's "Part 70 Operating Permits Program Review Checklist" of August 5, 1993 sets up the following standards for "state-only" enforceability:

> Does the program provide that all terms and conditions of a permit . . . are enforceable by EPA and citizens, unless such terms are **specifically designated** as not federally enforceable?[12]

Based on the precise phrasing of the Checklist, as well as the specific phrasing of 40 C.F.R. § 70.6(b), it appears critical that ADEM rephrase its "state-only" enforceability language to require the **specific designation** of those portions of ADEM-issued permits that are intended to be enforced only by the State of Alabama. One manner for doing this is to adopt the practice of preceding and following each state-only provision with an identifying symbol, and to provide for such a practice in its operating permit rules. APPCO therefore suggests that the following changes be made in the wording of ADEM 335-3-16-.06:

> 335-3-16-.06 Federally enforceable requirements
>
> (1) All terms in a permit that are required to be part of permit pursuant to the Act are federally enforceable by EPA, the Department and citizens in general. However, those provisions of the permit that are specifically designated as such are considered to be state permit provisions only

[12] As an example, the general terms and conditions of an operating permit issued by ADEM might contain the following sentence:

> All terms and conditions preceded and followed by the symbols { and } are enforceable only by the State of Alabama. E.g., {The permittee shall conform to the requirements of ADEM 335-3-16-.02(2) concerning display of the operating permit.}

and consequently are not federally enforceable by EPA and citizens in general.

(2) All terms and conditions that are not federally enforceable will be preceded and followed by distinctive symbols. All permits will contain the following language:

> "Any term or condition that is preceded and followed by symbols identified as indicating enforceability only by ADEM is not federally enforceable."

In the same vein, APPCO recommends that ADEM designate those portions of ADEM 335-3-16 that are not intended to be federally enforceable. For example, ADEM 335-3-16-.02 repeats language that has appeared in ADEM regulations in the past, rather than language derived from 40 C.F.R. Part 70. While not required by the final federal operating permit rules, designation of those portions of ADEM 335-3-16 that are not intended to be federally enforceable might spare misunderstandings and uncertainty in the future. To this end, APPCO recommends the addition of a new defined term, "applicable state requirements," to be added to ADEM 335-3-16-.01:

> "Applicable state requirements" means all of the following as they apply to emission units in a source subject to this rule (including requirements that have been promulgated or approved through state administrative proceedings at the time of permit issuance but have a compliance date in the future.)
>
> (1) Any standard or requirement in ADEM Admin. Code Section 335-3-16-.02 [and any other section that is intended by ADEM to be "Alabama-only" law]; and
>
> (2) Any standard or requirement that does not qualify as an applicable requirement of the Clean Air Act."

202. Application Shield

The APPCO commends ADEM for including the application shield language in ADEM 335-3-16-.04(6). The language is ADEM 335-3-16-.04(6) is less explicit than it might be; it is therefore recommended that the specifics of the application shield be expanded to indicate that the application shield will not be voided simply because ADEM asks for additional information concerning the permit application; that the application shield will "attach" to applications for renewal permits; and that the application shield will apply to applications for minor permit modifications and administrative permit amendments, as well as to notices of off-permit changes. To this end, APPCO recommends that ADEM 335-3-16-.04(6) be reworded as follows:

ADEM 335-3-16-.04(6):

> "(6) If an applicant submits a timely and complete application for an initial permit or renewal under this section, failure of the source to have a permit or operation of the source without a permit shall not be a violation of this rule until the Director takes final action on the permit application.
>
> (a) If, while processing a permit application deemed to be complete, it is determined that additional information is necessary to take final action on the application, the Director may request such additional information. Such request shall be in writing and shall specify a reasonable deadline for responsive action by the applicant. Neither the determination nor a request for additional information shall void the application shield.
>
> (b) If the applicant believes any request for additional information is unreasonable or is not authorized by law or regulation, or is not needed to take action on the application, the applicant may request a hearing on the request.

(c) The application shield authorized under this section shall remain in force during the pendency of any proceedings under subsection (6)(b) of this section.

(d) If an applicant files a timely and complete application for a renewal permit under this section, the previous permit shall not expire until the renewal permit has been issued and all of the terms and conditions of the previous permit, including the permit shield authorized under ADEM Admin. Code § 335-3-16-.10 shall remain in effect from the date that the renewal application is deemed complete until the date that the renewal permit is issued.

(e) The application shield authorized in this subsection shall apply to applicants for minor permit modifications under ADEM Admin. Code § 335-3-16-.13(3) until final action is taken on such minor permit modification requests.

(f) The application shield authorized in this subsection shall apply to applicants for administrative permit amendments under ADEM Admin. Code § 335-3-16-.13(1) until final action is taken on such administrative permit amendments requests.

(g) The application shield authorized in this subsection shall apply to those permittees who provide notice of an intent to undertake flexible permit changes in accordance with ADEM Admin. Code § 335-3-16-.13(2) until the applicant is notified that the change does not qualify for treatment as a flexible permit change.

203. Exclusion of Hydrogen Sulfide from "HAP's List"

Appendix G, which follows proposed ADEM 335-3-16, includes hydrogen sulfide as one of the "hazardous air pollutants" listed by Congress in amending Clean Air Act § 112 in 1990. Hydrogen sulfide does not appear in the listing of hazardous air pollutants in Clean Air Act § 112(b) as codified in 42 U.S.C. § 7412. APPCO therefore urges that hydrogen sulfide be removed from Appendix G.

204. Notice of Emergency and Deviation

ADEM 335-3-14-.03(1)(h).2 and 335-3-16-.11(2) provide that the Director may exempt, on a case-by-case basis, exceedances of emission limitations caused by emergency conditions, provided that a permittee submitted notice of the emergency to the Director within two working days. Additionally, ADEM 335-3-16-.05(3)(c).2 requires the reporting of "deviations" from permit limits "within 48 hours of such deviations."

APPCO wishes to clarify that telephone notification may satisfy the notice requirement for **both** emergencies and deviations. APPCO also seeks to clarify that written notice should only be required upon specific request after telephone notice is given. Next, in order to avoid confusion over when a working day begins and ends, APPCO recommends that the period within which reports must be made should be expressed in terms of hours, as is the case with deviations, rather than days, as is the case with emergencies. Specifically, APPCO recommends that the period for reporting be changed to "48 hours, excluding weekends and state, federal and business holidays." Additionally, it is recommended that the time period for reporting should begin to run as of that time that notice of the deviation or emergency is received by a "responsible official" of the permittee.

Finally, APPCO questions the requirement that permittees report the "probable cause of . . . deviations, and any corrective actions or preventive measures that were taken" within 48 hours. Determination of the cause of deviations and the determination of corrective action may well take weeks if not months. There should be a clarification in the final rules that any immediate reporting of the cause and cure of deviations need only be preliminary, particularly in circumstances in which diagnosis proves to be difficult.

Taking the foregoing into account, APPCO recommends that ADEM 335-3-14-.01(h).2.(ii).(IV), ADEM 335-3-16-.11(2)(b).4, and ADEM 335-3-16-.05(3)(c).2 be reworded as follows:

ADEM 335-3-14-.01(1)(h).2.(ii).(IV):

> (IV) the permittee submitted notice of the emergency to the Department within 48 hours, excluding weekends and state, federal and business holidays, of the time when the responsible official of the permittee received notice that emission limitations were exceeded as a result of the emergency; notice to the Department by telephone or facsimile is acceptable, as well as written notice at the specific request of the Department subsequent to the telephone notice.

ADEM 335-3-16-.11(2)(b).4:

> 4. The permittee submitted notice of the emergency to the permitting authority within 48 hours, excluding weekends and state, federal and business holidays, of the time when the responsible official of the permittee received notice that emission limitations were exceeded as a result of the emergency; notice to the Department by telephone or facsimile is acceptable, as well as written notice at the specific request of the Department subsequent to the telephone notice.

ADEM 335-3-16-.05(3)(c).2:

> The source to make preliminary reports of deviations from permit requirements by telephone within 48 hours (excluding weekends and state, federal and business holidays) of receipt of notice of the deviation by the responsible official, including those attributable to upset conditions as defined in the permit, of the probable cause of said deviations and any preliminary corrective actions taken to correct the deviations.
>
> > (i) The source to make subsequent written reports of the cause of the deviation at the direction of the Department, as determined on a case-by-case basis.
> >
> > (ii) Such subsequent written reports to include a statement as to corrective actions or preventive measures, as determined on a case-by-case basis.

205. Timing for Submission of Renewal Applications

APPCO urges recommends that ADEM not call for a renewal application more than 270 days in advance of the expiration date of an operating permit, except in extraordinary circumstances. It is acknowledged that 40 C.F.R. § 70.5(a)(1)(iii) authorizes a permitting authority to require submission of renewal applications at least 6 months and as much as 18 months before permit expiration. Should ADEM make it a practice to require renewal applications more than a year before permit expiration, however, the permit-obtaining process for regulated industry will become essentially unending -- particularly if there are required permit "reopeners" during the term of the permit.

APPCO recommends the following changes in the text of the proposed rules:

ADEM 335-3-16-.12(2)(b):

> A source's right to operate shall terminate upon the expiration of its permit unless a timely and complete renewal application has been submitted at least six months, but not more than 18 months, before the date of expiration or the Department has taken final action approving the source's application for renewal by the expiration date. As a matter of practice, the Director shall not require submittal of renewal applications more than 270 days in advance of the expiration date, except in extraordinary circumstances.

206. Timing for Action on Significant Modification Requests

ADEM 335-3-16-.13(4) in the proposal does not incorporate the mandatory language of 40 C.F.R. § 70.7(e)(4) which requires the "permitting authority [to] design and implement [the significant modification]

review process to complete review on the majority of significant permit modification requests within nine months of receipt of a complete application." The proposal should be revised to incorporate this deadline for action.

ADEM 335-3-16-.13(4):

> Significant modifications. Modifications that are significant modifications under the ADEM Admin. Code R. 335-3-14-.04 or ADEM Admin. Code R. 335-3-14-.05 or are modifications under the NSPS or NESHAPS regulations must be incorporated in the Operating Permit using the requirements for sources initially applying for an Operating Permit, including those for applications, public participation, review by affected States, and review by EPA, as described in ADEM Admin. Code R. 335-3-16-.04 and .14. The Department shall implement the significant modification review process in such a manner as to complete review of a majority of significant modification requests within nine months of the receipt of a complete application.

207. Timing for Action on Synthetic Minor Operating Permit Applications

ADEM 335-3-15-.04(2)(a) would require all existing sources that "would request a Synthetic Minor Operating Permit" to do so within one year of the effective date of the operating permit program. However, the Synthetic Minor Operating Permit rules do not provide a specific time period within which the Department is required to act on permit applications. To avoid disputes over what constitutes a "reasonable time," APPCO recommends that this provision be modified to include a specific time period allowing the Department sufficient time to make a determination and in turn allowing a facility adequate time in which to apply for an operating permit pursuant to ADEM 335-3-16 if it is not approved as a synthetic minor:

ADEM 335-3-15-.04(1)(d):

> (d) The Department shall act, within a reasonable time, not to exceed 60 days, on a complete application for a Synthetic Minor Operating Permit and shall notify the applicant in writing of its approval, conditional approval, or denial.

208. Public Participation in New Source Permitting

ADEM 335-3-14-.01(7)(c) should be revised to confirm that the process that applies to PSD/NSR sources under ADEM Chapter 335-3-14 incorporates pertinent public participation procedures applicable to those sources, not just public notice:

ADEM 335-3-14-.01(7)(c):

> (c) Public ~~Notice~~ Participation will be held in accordance with the requirements of 335-3-14-.04 and 335-3-14-.05 for any application which is subject to the requirements of 335-3-14-.04 or 335-3-14-.05.

209. Certification Requirements

The language in ADEM 335-3-16-.04(9)(a) setting forth the certification requirement of the "responsible official" would be improved if the precise language of the certification were included. Including the exact wording of the certification would help impress upon the regulated community how serious an undertaking compliance certifications and other required submissions will be under the operating permit program. Based upon the certification applicable to the designated representative under the Acid Rain Program in 40 C.F.R. Part 72 and incorporated in Acid Rain Program forms, the following certification is suggested:

ADEM 335-3-16-.04(9)(c):

(c) The responsible official shall include the following certification on all application forms, reports or compliance certifications submitted pursuant to this rule:

> "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine and imprisonment."

210. Permit Fee Issues

APPCO understands that ADEM intends to apply permit fee revenues collected in May and June to permit program expenses that arise during the next fiscal year, beginning at the end of September. In specific terms, permit fee revenues collected in May and June 1993 are to be applied to the costs associated with the operating permit program starting on October 1, 1993, the beginning of fiscal year 1994. APPCO agrees with this process.

However, APPCO questions whether the language in proposed ADEM 335-1-7-.04(7) precisely reflects this intention. If APPCO understands ADEM's position correctly, it would appear that ADEM 335-1-7-.04(7) should be reworded as follows:

ADEM 335-1-7-.04(7):

> If at the end of any fiscal year, the amount of operating permit fees carried over in the Air Division budget exceeds the amount of the Air Division budget for the following fiscal year, the operating permit fees shall be reduced at the time of the next fee payment cycle.

Another matter that has concerned APPCO members over the past few years has been the burden that permit fees will impose. APPCO has supported the approach adopted by ADEM, namely collecting fees before the effective date of the operating permit program with the expectation that ADEM will be staffed and capable when the operating permit program goes into effect. As part of the early fee collection program, ADEM committed to investigate the possibility of applying early permit fee payments to the effective date of the program. The proposed rules honor this commitment.

APPCO appreciates and supports the proposed fee schedule in ADEM 335-1-7-.04(6), particularly the mandatory requirement for application of early payments. We also support the reduction of operating permit fees in years following those years in which revenues collected exceed the Air Division's program expenditures.

APPCO would also like to propose that ADEM investigate the possibility of entering into a contract for the periodic performance of an evaluation of the operating permit program, to be conducted by an independent expert. This recommendation is based on APPCO's assumption that the cost of the evaluation would be deemed a legitimate "direct or indirect cost" of the operating permit program, and could thus be recovered from permit fees. The objective of this independent evaluation is to demonstrate the adequacy of the permit fees charged by ADEM, when evaluated against the "presumptive minimum fees" and other criteria set forth in 40 C.F.R. § 70.9(a). This proposal is intended to provide ADEM and the State of Alabama objective evidence concerning the quality and soundness of the operating permit program within the state.[13]

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[13]According to EPA's "Questions and Answers on the Requirements of the Operating Permit Program Regulations," dated July 7, 1993, EPA will require periodic accounting that demonstrate that all of the costs of the required activities" are covered by permit fees. EPA further states that accounting will be required if a state "makes a significant change in the fee structure."

In sum, the independent evaluation is proposed as a means by which the state can assure itself and regulated industry that the program will maintain its approved status, irrespective of adjustments in the permit fee.

211. Synthetic Minor Permit Transfer

APPCO applauds ADEM's addition of language to ADEM 335-3-16-.02(6) to confirm that operating permits may be transferred under the administrative permit amendment mechanism. (It is noted that the cross reference in ADEM 335-3-16-.02(6) to ADEM 335-3-16-.13(a)(5) should be to ADEM 335-3-16-.13(1)(a)(5)).

The draft provisions of ADEM 335-3-15-.02(6) conflict somewhat with the provisions of the federal operating permit rule provisions allowing transfer of permits under the administrative permit amendment procedures in 40 C.F.R. § 70.7(b). Although it is fitting that ADEM place some conditions on permit transfers, APPCO questions whether it is appropriate to impose a flat prohibition on the transfer of a synthetic minor operating permit, either from one piece of equipment to another, or from one person to another. (APPCO is presuming that the draft ADEM rules contemplate the issuance of an entirely new permit to accomplish a permit transfer.)

APPCO recommends a procedure allowing a new owner to operate an already permitted source under the terms of the existing permit with a minimum of administrative steps. A similar procedure is proposed for replacement of permitted equipment. Typically, the replacement of a piece of equipment that is an air pollution source with like-kind equipment is not a "modification." If a permittee must go through the synthetic minor source permit process every time a piece of equipment is replaced, the permittee might suffer delays in replacing malfunctioning equipment and the Department could face an unnecessary strain on its resources. APPCO therefore recommends that the proposal be amended to allow transfer of permits without jeopardizing the synthetic minor status of the of the permitted equipment:

ADEM 335-3-15-.02(6):

> (6) Transfer. A Synthetic Minor Operating Permit shall be transferable, either from one location to another, from one piece of equipment to another, or from one person to another, subject to the following conditions:
>
> > (a) Transfer from one person to another person may be permitted where the Department is provided with at least 15 days prior notice that includes a certification that the facility will continue to be comply with the terms and conditions of the existing permit;
> >
> > (b) Transfer from one piece of equipment to another may be permitted where the piece of equipment to which the permit is to be transferred is replacing the piece of equipment to which the permit presently applies and is identical or substantially similar to the piece of equipment which it is intended to replace.

212. Making the Operating Permit Program User-Friendly

APPCO believes that some additional regulatory language could help to make the permit program easier to deal with. This concerns timing of completeness determinations by ADEM.

APPCO takes these two pronouncements to mean that EPA will look very closely at any attempt by a state to go below the presumptive minimum fee of $25 per ton, and is likely to resist such attempts. Additionally, EPA's "Questions and Answers" indicate that the cost of accounting is a legitimate indirect cost of the permit program. *Id.* at 9-1, 9-2.

APPCO recommends addition of the following language to the section which addresses applicability of the operating permit rules:

ADEM 335-3-16-.04(5)(a),(b):

(a) Within five business days of receipt of an initial permit, permit renewal or permit modification application, the Director shall notify the applicant of receipt and the date upon which the application will be automatically deemed complete in accordance with this section.

(b) In making completeness determinations, the Director shall develop a form or checklist to facilitate communication of any deficiencies in the application. A copy of the form or checklist will be provided along with application forms provided by the Director. A copy of the completed form or checklist will be provided to the applicant in conjunction with any communications concerning application completeness.

213. Production Curtailment

APPCO recommends that ADEM 335-3-16-.05(7) be revised, by adding a new sentence, to acknowledge that a halt or partial curtailment of production might cause a greater risk to worker safety or to the environment than that posed by the deviation from compliance.

Provided, that a source may raise, as a matter in mitigation, the worker safety, public health and environmental risks associated with failure to maintain production.

214. Permit Procedures

APPCO recommends that ADEM 335-3-14-.01(1)(f) be modified further to reflect the role of the "owner or operator" in the permitting process. These recommendations include changing the word "testifying" in the first sentence to "stating"; changing the words "testimony" and "owner or operator's qualifications are insufficient to allow him to accurately and completely assess the equipment in question" in the second sentence to "the owner or operator's submittal if the Director decides that the owner or operator's submittal does not provide a sufficient basis upon which to make an accurate and complete assessment of the equipment in question."

215. Merging Operating Permit Program with PSD/NSR Procedures

APPCO understands that ADEM intends to grant new source review applicants a choice whether to institute separate proceedings to deal with PSD/NSR ("Air Permits") and Operating Permits, or to consolidate Air Permit and Operating Permit licensing into joint or concurrent proceedings. APPCO agrees with this approach. Permit applicants should be given the opportunity to choose the procedural mechanism by which PSD/NSR permits are obtained and merged with operating permits.

COMMENTS FROM COURTAULDS FIBERS

216. Courtaulds Fibers Inc. (CFI) appreciates the opportunity to comment on the revisions to the Alabama Department of Environmental Management (ADEM) Administrative Code for General Administration (335-3-1-7) and for the Air Division (335-3), which were proposed in August 1993.

CFI wishes to limit its comments to the proposed revisions to the Air Division regulations. In particular, CFI believes that the proposed revisions may have mistakenly included hydrogen sulfide on the list of Hazardous Air Pollutants (HAPs) found at Appendix G.

Appendix G appears to be intended to incorporate the federal list of HAPs under Section 112 of the

federal Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (CAAA). Appendix G is entitled "Clean Air Act Amendments of 1990 - List of Hazardous Air Pollutants." The Summary of Reasons Supporting Adoption of Revisions states that "[t]he addition of . . . Appendix G [was] necessary to modify the existing permitting system to be compatible with the new federal requirements."

Although the list of HAPs in Appendix G is identical to those originally listed in the federal CAAA, it does not reflect a subsequent revision to Section 112 that deletes hydrogen sulfide from the list of HAPs.[1/] The amendment to the federal CAAA was enacted to correct the mistaken inclusion of hydrogen sulfide on the list of HAPs on the bill signed into law by then President Bush. Hydrogen sulfide was not included in the list of HAPs on the bill enacted by Congress. In enacting the amendment deleting hydrogen sulfide from the list of HAPs, both the House and the Senate termed it "a technical correction". [2/]

Senator Mitchell explained the need for the amendment deleting hydrogen sulfide as follows:

> During consideration of the 1990 legislation, the conferees agreed to remove the term "7783064 Hydrogen sulfide" from the list of hazardous air pollutants in section 112(b) (1) of the Clean Air Act.
>
> That term was inadvertently left in the enrollment of the 1990 legislation due to a clerical error. [3/]

Representative Lent similarly stated:

> Mr. Speaker, during the conference last fall on the Clean Air Act amendments, the conferees agreed to include the chemical hydrogen sulfide on the list of chemicals subject to the accident prevention, detection, and response provisions. But the conferees specifically agreed not to include hydrogen sulfide on the list of chemicals in section 112-B. The chemicals listed in section 112-B are those for which EPA must issue stringent control regulations over the next 10 years. As evidence of our intent not to include hydrogen sulfide in section 112-B, it is worthwhile to note that the copy of the final bill that was printed by the Government Printing Office does not include hydrogen sulfide in section 112-B.
>
> However, while the final bill was being prepared to be sent to the President for his signature, hydrogen sulfide was inadvertently added back to the list of chemicals in section 112-B. The President signed this version of the law . . . .[4/]

Because Congress did not intend hydrogen sulfide to be included on the list of HAPs and acted to delete it from the HAP list when it was nevertheless mistakenly included, CFI believes that ADEM also should not include it on Appendix G list of HAPs. Leaving it on the list would be plainly inconsistent with clearly expressed Congressional intent. It also would result in extremely burdensome and unnecessary requirements on industry. As Representative Lent stated:

> This mistake is different from other possible mistakes because it was made after both Houses had completed consideration of the bill and as it was being prepared for the President's signature.
>
> Furthermore, Mr. Speaker, this mistake needs to be corrected as soon as possible because this mistake places a number of businesses and industries at risk of significant regulation that the Congress did not intend. [5/]

For all of these reasons, CFI urges ADEM to delete hydrogen sulfide from the list of Appendix G HAPs when it promulgates the final rule.

COMMENTS FROM THE BIRMINGHAM AUDOBON SOCIETY

217. In regard to the air pollution control regulations proposed at the public hearing on October 14, 1993, the Birmingham Audubon Society supports the Department in its effort to be prepared for the changes mandated by EPA and to retain primacy in the air program.

The changes in 335-1-7, I trust, will not jeopardize the Department's plans for adding staff to be able to implement the regulations.

Responses to Comments

Comments 1, 3, 68, 130, and 131: These are comments concerning parts of the regulations that were not being changed and, therefore, not open to comment.

Comments 2, 21, 23, 26, 31, 34, 43, 52, 63, 64, 110, and 128: These comments do not need responses since they are statements in favor of the proposed regulations.

Comments 5, 6, 7, 132 - 142, 154, and 215: These comments were made on regulations that are merely being recodified, and, therefore, not open to comment.

Comments 27, 75-88, 90, 123, 143-144, 155-158, 167, 176, 177, 179, and 208: These comments were made for typographical errors or suggested rewordings. The Department agrees that the typographical changes should be corrected and that rewordings should be made when appropriate.

Comment 4: This is language commonly present in ADEM's regulations and should not be changed.

Comments 8, 30, 46, 50, 79, 101, 111, 161 and 198: These comments concern the provisions for "trivial" and "insignificant" activities as they pertain to Chapter 16. Most of these comments concerned the activities that should be included in these lists, and the Department will take these comments into consideration when compiling the lists. Other comments concerned that there be a provision in the regulations which would allow changes to "trivial" and "insignificant" activities or make changes that are "insignificant" without going through permit modification procedures. The Department agrees with this concept and will add language to the regulations which will allow such changes. Finally, one comment suggested that the "trivial" and "insignificant" activities lists be include as part of regulations. This would be unnecessarily cumbersome, and therefore the regulation should not be changed.

Comment 9: Although there is a similar provision in the regulations for not aggregating fossil-fuel exploration and production sources, this provision was specifically required by the Clean Air Act Amendments (CAAA). The Department does not believe that a similar provision for utility companies is needed since similar language in Chapter 14 has always been interpreted to exclude power line rights-of-way as constituting contiguous property.

Comment 10: Unless the text clearly indicates otherwise, the meaning would be the same.

Comment 11: The proposed regulations do state that the responsible official must be the designated representative for sources subject to the acid rain regulations for those requirements under title IV. However, for other activities not subject to the acid rain regulations, another official may be delegated the title of "designated representative" (and therefore responsible official) and is so indicated in the regulations.

Comment 12: The regulation indicates that the requirement to submit a plant to reduce emissions during air pollution episodes only applies to facilities where such a plan is specifically required. This is identical to language in the Chapter 14 regulations which has always been interpreted to allow reduction to be made at individual points.

Comment 13: If it was the intention of the CAAA for the study on HAPs from utility coal-fired boilers greater than 250 million Btu/hr boilers to be completed before the provisions for HAPs became effective, it was not indicated so in the CAAA. The Department does not believe that a special exemption is warranted here and should not make the suggested change.

Comment 14: Since non-major sources that are not subject to NSPS or NESHAPs regulations are not included in the list of sources subject to Chapter 16, it is not necessary to exempt them.

Comments 15 and 47: For new sources, "upon becoming subject to these regulations" means one year after operation begins. For existing sources, it is one year after the regulations are approved by EPA.

Comment 16: The regulations provide the flexibility for the Department to coordinate title V and title IV permitting as requested.

Comment 17: The Department agrees that there should be some time period defined as "reasonable" for submitting additional information and the commenter's suggested wording should be added to the regulations.

Comment 18: The Department will likely apply for interim approval for the program, which would allow the issuance of all Operating Permits to be extended to 5 years and therefore space the reissuance of permits evenly as the commenter suggests.

Comment 19: Information in a permit application would not limit a source unless there is a provision in the permit or an applicable regulation that limits the activity, as suggested by the commenter.

Comments 20, 55, 67: These comments concerned reporting of deviations from permit requirements. One requested that a minimum time be put in the regulations. This has traditionally been done on a permit-by-permit basis and will continue to be done that way. Another requested that the time period for reporting be changed from 48 hours to 5 working days. This is a reporting requirement and can be accomplished by telephone. Therefore, the time period should not be changed. However, to be consistent with the emergency provision in the regulations, the time period will be changed to 2 working days. Another comment suggested that incidents be required to reported within 2 working days of ***knowledge*** of the incident. The Department believes that provisions should be made by the permittee so that incidents are discovered immediately and therefore should not make the suggested change.

Comments 22 and 94: Applications for Synthetic Minor or Major Source Operating Permits are exempted from permit application fees. Applications involving modifications or new source construction from any facility will be assessed fees as is presently required.

Comment 24: The definition of Greenfield Site is consistent with the definition previously given it in Administrative Code I of the Department's regulations. Therefore, no change is appropriate.

Comment 25: The Department agrees that the provisions for exceptions to violations should be consistent in each permit chapter. Therefore, the wording in Chapter 15 should be changed accordingly.

Comment 28: The Department agrees that the provisions for allowing inspections by the Department personnel should be consistent in the operating permit chapters. Therefore, in Chapter 14 and 15, wording should be added that facilities must allow inspections ***at reasonable times.***

Comment 29: While it is true that the permit application procedures for name changes or transfer of ownership are clearly defined in Chapter 16 (as required by Part 70) and that the procedures are not clearly defined in Chapter 15, the procedures for transferring permits for sources subject to Chapter 15 would be identical to the procedures used at this time. That is, the permits would be transferred administratively if the applicant agrees to abide by the existing permit conditions. Therefore, no change is needed.

Comment 32: The exemption provision for insignificant and trivial emissions includes an exemption from the requirements that these emissions be quantified for purposes of determining emission fees. No change to the regulations is necessary to accomplish this.

Comments 33 and 73: The provision for alternate operating scenarios would allow a source to propose different operating schemes at a plant so as to allow changes in operations without permit modifications. Because an applicant may propose any number of alternate operating scenarios, it is inherent that these can be approved if all requirements listed elsewhere in the regulations are met. No change is necessary.

Comment 35: ADEM will maintain a list of any general permits which are issued. However, having such a requirement in the regulations is unnecessary.

Comment 36: The purpose of the 10-day waiting period before commencement of construction of a minor modification is to allow the Department to review the application to determine if the modification qualifies under the minor modification section of the regulations. This provision should not be removed.

Comments 37, 38, and 39:

a. The Department plans to have workshops on the title V regulations and to create a permit manual.

b. Applicants will be allowed to volunteer to have their application acted upon in the first year of the program, even though the prioritization scheme showed them to be scheduled for later years.

c. If desired, applicants can submit two versions of a permit application, one containing all information which must be available for public review, and a second which would also contain data required to be held confidential.

d. ADEM encourages applicants to discuss applications with its staff before due dates, and would provide comments on draft applications if requested.

Comments 40 and 57: Differentiating the state-only regulations from the federally enforceable regulations by using a different font or underlining the applicable portions would be a task with benefits not commensurate with the effort. Additionally, regulations must be codified in a format which conforms to the Administrative Procedures Act.

Comment 41: Every 5 years, a new application must be submitted for each facility. However, voluminous reports, etc. may be referenced if no changes in the data have occurred in the intervening years.

Comment 42: The permit application forms are not part of the regulations. ADEM welcomes any comments on the forms, and would alter them at any time if warranted.

Comment 44: The Department already creates an annual report on how the funds for the Air Division are put to use. A copy is available upon request.

Comment 45: This section gives the Director the authority to assess late fees for non-payment of emissions fees and, only if other efforts fail, to revoke a permit for failure to pay fees.

Comment 48: The Part 70 regulations require that any new applicable requirement that becomes effective after an application has been submitted but before a draft permit is issued must be incorporated into the permit application. However, the facility would still be required to meet any applicable requirement, even if the draft permit has been issued, and the permit would have to be reopened later to include the applicable requirements.

Comment 49: Section 129(a)(4) in the CAAA requires that numeric emission limits be developed for municipal waste combustion (MWC) sources for the pollutants listed. It does not indicate that other toxic air pollutants should <u>not</u> be addressed in the operating permit application. Therefore, a provision to exempt MWC sources from the requirement to list other toxic air pollutants should not be added to the regulations.

Comment 51: This language was added to allow facilities whose application would not be acted on for 2 or 3 years to submit a "bare-bones" application and not be required to certify that the application is complete at that time. A complete application with the certification of completeness would be required at a later date. We believe that this meets the intent of the CAAA.

Comment 53: Monitoring information may be kept electronically but the facility would be required to provide a hard copy upon request.

Comment 54: We can see no reason why the annual compliance certification could not also serve as the semi-annual compliance report. The time period for submitting such reports was not included in the regulations, but would be included in each operating permit.

Comment 56: There are no emissions trading provisions in Administrative Code 3. The only other emissions trading that would be applicable would be the program in title IV for acid rain sources.

Comment 58: The requirements for determining continuous compliance at a facility will be made on a case-by-case basis, and cost is a factor in this decision.

Comment 59: The Department will provide its address and the address of the EPA when it supplies permit applications to the facilities. Since these may change, it would be inappropriate to place these in the regulation.

Comment 60: The Department believes that it should have the flexibility to allow or deny a permit shield, depending on the circumstances. Therefore, the provision should not be changed from "the Department ***may*** include" a permit shield to "the Department ***shall*** include" a permit shield. Any permit which is issued with or without a shield can be appealed, so there are mechanisms available to insure the discretion is properly exercised.

A permit shield is provided for in the regulations as long as the applicant identifies all requirements which do apply to it, provides the rationale for such conclusions, and ADEM concurs with the data submitted by including those provisions in a Permit. Additionally, a permit shield is provided if an applicant identifies requirements which do not apply, provides the rationale for such conclusion, and ADEM concurs during its review of permit applications.

Comment 61: The provision for reporting an upset or emergency to be exempt from being violation can be accomplished by telephone. Therefore, a longer period than 2 working days is not needed.

Comment 62: The regulations already provide for public comment when a permit is reopened for cause.

Comments 65, 203 and 216: The EPA has already delisted hydrogen sulfide from the list of air toxics. Therefore, it should be removed from Appendix G also.

Comment 66: Once a pollutant is subject to an NSPS, it becomes a regulated air pollutant. Then, it is a regulated air pollutant for all sources which emit it.

Comments 69 and 171: It is suggested that insignificant and trivial activities be excluded when determining whether to deny a permit if all units at the facility are not ***shown*** to be in compliance in the application. Since it is not necessary to list applicable regulations, compliance status, etc. for insignificant or trivial activities in the application, we agree that this provision does not apply to trivial and insignificant sources. Therefore, it is not necessary to include the exemption in the regulations.

Also, comments were made concerning the provision that would deny an Operating Permit if operation of the source would interfere with attaining or maintaining an ambient air standard. The scope of the Operating Permit program does not include ambient air standards; air quality effects of sources holding operating permits are considered outside the operating permit program. Therefore, this provision should be deleted.

Finally, there was comment that a permit should be denied if the applicant operates another source in the state that is in substantial noncompliance. Again, this should be addressed as an enforcement issue and should not be in the operating permit regulations.

Comment 70: The Department agrees that the provision that makes a permit ineffective if the permit fees have not been paid is unnecessary. There are already provisions in Administrative Code 1 which empower ADEM to assess late fees or, if necessary, to revoke a permit for non-payment. Therefore, this provision should be removed.

Comments 71, 184 and 201: These comments deal with provisions in the operating permit that are enforceable only as state requirements. The commenters suggest that the regulations require that state-only requirements be clearly identified in the permit. The Department agrees and the regulation should be changed to include this requirement.

Comment 72: This comment suggests that the applicant receive a copy of the proposed permit when EPA is sent its copy and that any comments received on the proposed permit be germane to the permit process in order to have any substantive impact on the procedures. The Department agrees that the applicant should receive a copy of the proposed permit, and the regulations should be modified accordingly. However, the requirement that comments must be germane to the title V permit is inherent and restating it in the regulation is unnecessary.

Comment 89: Of course, safety should be considered when requiring monitoring and testing of emission sources. However, this is self-evident and , therefore, should not be added to the regulations.

Comments 94-108: These comments from Du Pont are essentially the same as the ones submitted by the Alabama Chemical Association. Since the ACA comments have already been addressed, there is no need to respond to these comments.

Comment 109: The definition of an emissions unit can be interpreted to mean a process unit since it is part of a stationary source. This would allow emissions from valves, flanges, etc. to be counted as one source. Therefore, this suggested change is not necessary.

Comment 111: The Department agrees that changes which by themselves are below the insignificant activities rates should be considered insignificant activities. Therefore, changes to a specific emissions unit that increase emissions by less than the 5 ton/1000 pounds per year rates should added to the definitions of insignificant activities, provided that the change is not subject to a NSPS or NESHAPs.

Comment 112: This comment suggests that the definition of major source include only ***regulated*** air pollutants in the determination, instead of ***any*** air pollutant. The Department agrees that this change should be made.

Comment 113: It is not necessary to include a definition of a chemical processing plant in the list of 28 source categories in which fugitive emissions should be considered when determining whether a source is major since precedent has been set elsewhere. Any source that has a Source Industrial Code that begins with 28 is considered a chemical processing plant.

Comment 114: Again, as pointed out in the response to Comment 113, precedent has already been set for these source categories and it is not necessary to define petroleum as it pertains to petroleum storage and transfer units.

Comment 115: The definition of VOC's already exempts ethane and methane. Therefore, this change is not necessary and should not be made.

Comment 116: Accidental releases, which by definition cannot be quantified before their occurrence, will not be counted toward the applicability thresholds for major sources.

Comment 117: The monitoring and analysis procedures in the applicable requirements, such as NSPS or NESHAPs, already have provisions for alternative test methods. Therefore, this change should not be made.

Comment 118: "Periodic", instead of "annual", provides the Department with the ability to tailor monitoring requirements on a case-by-case basis. Monitoring may be more or

less frequent than annually. Also, ***consistent*** data is not the same as ***reliable*** data. Therefore, these changes should not be made.

Comment 119: The requirement for semi-annual monitoring reports is mandated by Part 70 regulations, which defines the minimum requirement of a state program. Also, the requirement for certification of compliance is not the same as the requirement for submitting monitoring reports, in that the monitoring reports do not require affirmation of compliance. Therefore, the change should not be made.

Comment 120: This comment suggests that a provision be added that allows monitoring reports to be submitted at any time within the reporting period. Such reporting requirements have been detailed in each permit in our present system. Typically, submittal of reports have been required within 30 days of the end of the period. The Department plans to continue to require submission of reports in this manner; therefore, this change should not be made.

Comment 121: A deviation from a permit requirement can mean that a device has gone below minimal limit. An example of this is requirement to maintain a minimum percent recovery of sulfur at a sulfur recovery plant. Therefore, this modification should not be made.

Comment 122: This language is identical to the corresponding provision in the Part 70 regulations.

Comment 124: In the following provisions, the term "at reasonable times" is used. Therefore, the phrase " during normal working hours" is not needed and should not be added to the regulations.

Comment 125: Only the owner or operator of a source is liable for violations of the Air Division regulations. Therefore, a provision that absolves the land owner from liability is not needed and should not be added to the regulations.

Comments 126, 187 and 204: These comments concern the notice of emergencies or upsets. Some of the comments concerned how the notice should be given. The Department will allow reports of upsets or emergencies to be reported by telephone, and the regulations allow it. Therefore, a provision should be added to the regulations which requires written reports within 5 working days. Another comment concerned what should be reported in the notice. We agree with the commenter that the reporting requirements in 16-.05(3)(c)2. (i.e., the probable cause and any corrective actions that were taken.) should be included here also.

Comment 127: This provision provides an exemption for exceedances during emergencies. Therefore, it is not necessary to add a provision that allows exceedances of technology-based emission limits during emergencies.

Comment 129: This comment appear to have been made in error.

Comment 145 and 207: These comments state that "within a reasonable time" is not a period that is specific enough for acting on a Synthetic Minor Operating Permit (SMOP) application. This identical to language in other parts of ADEM's permitting regulations and should not be changed.

Comment 146: The commenter suggests that EPA should also be involved in determining whether an emergency has occurred. The Department believes that it should have autonomy in deciding such cases and no workable mechanism was suggested for any consultation. Therefore, this change should not be made.

Comment 147: The Department should have the leeway to lengthen a public comment period in case that more time is needed. Therefore, the provision that the public comment period be at least 15 days should not have the phrase "at least" removed.

Comments 148 -153: These are comments concerning the federal enforceability of the "synthetic minor" permitting regulations. The first comment suggests that a provision be added to the regulations which requires the permit holder to comply with the terms of its permit and that permits which do not conform to the operating permit requirements and to EPA's underlying regulations may not be federally enforceable by EPA. The regulations should be amended to add this requirement. The second comment advocates adding a requirement that would cause denial of a permit if the source would be in violation of any federal requirement. Since the Department does not have the authority to enforce all federal requirements, this change should not be added. However, a clause will be added that states that issuance of a permit does not relieve the source from complying with any other requirements that may apply. The third comment requests that a provision be added that states "the limitations, controls, and requirements in the operating permits are permanent, quantifiable, and otherwise enforceable as a practical matter". A provision should be added to the regulations to incorporate this. The last comment concerns notification of EPA of a proposed permit and suggest that EPA should be given a draft of the permit 30 days prior to a hearing and should also be given a copy of the final permit. The Department believes that these requirements are too cumbersome, and should not be added to the regulations. A provision should be added which requires that a copy of the public notice be provided to EPA.

Comments 159, 160, and 164: These comments concern references to Chapter 10 and 11 in this Administrative Code. The regulations in Chapters 10 and 11 reference the federal regulations for NSPS and NESHAP sources. It is suggested that Sections 111 and 112 be referenced instead, since these are the sections in Act that authorizes the regulations. We believe that these regulations should reference our own regulations as much as possible; therefore, these changes should not be made.

Comment 161: The commenter recommends that we should consult with EPA before any changes made to the trivial and insignificant lists and that the lists be incorporated into the regulations. Due to the dynamic nature of these lists, it would be unnecessarily

burdensome to put the lists into the regulations. However, we will periodically inform EPA of any changes that we make to the lists.

Comment 162: We agree that the suggest wording for interim approval is clearer than the language in the proposed regulation and that the change should be made.

Comment 163: The reason that the definition of major sources for sources in nonattainment areas was omitted is that the only nonattainment area in the state is marginal (and is expected to be redesignated as attainment) and the definition for marginal areas is the same as the one in the proposed regulations. Therefore, this change should not be made. If an area is designated as nonattainment in the future, the definition will be revised.

Comment 165: We will reference Chapter 15 when a SMOP is mentioned in the regulations. However, we do not think that a definition should be put in this Chapter; therefore, this change should not be made.

Comment 168: There is no need to add "or a SMOP" in this provision since Chapter 15 has a similar provision.

Comment 169: We agree that the phrase "the Director ***shall*** issue an Operating Permit" is unduly restrictive and that "shall" should be replaced with "may".

Comment 170: The Department agrees that the phrase "including enhanced monitoring...".should be added to this section of the regulations.

Comments 172, 173 and 174: These comments concern stack height provisions that are already in Chapter 14. We believe that these requirements should not change simply because a source is required to obtain an Operating Permit. Therefore, the changes should not be made.

Comments 178, 181, 183, 186, 191, 193, 194, and 197: These comments concern rewording for clarification purposes. The Department agrees that the wording should be changed as suggested.

Comment 180: This comments suggests that an alternative test method should be approved by the Director ***and the Administrator***. The procedures for this would be unduly burdensome. Therefore, the regulations should not be changed.

Comment 185: We agree that a source that obtains a general permit should be subject to enforcement action for operating without a permit if it later found that the source did not qualify for a general permit. Therefore, this provision should be added to the regulations.

Comment 188: Although the Department does plan to provide a checklist or similar aid to applicants, it is inappropriate to require such items in the regulations. Therefore, this change should not be made.

Comment 190: It is not necessary to include the various powers that the CAAA gave to EPA in our regulations. Therefore, this change should not be made.

Comment 195: This clause was added to the regulations to allow the Department to issue a state permit if EPA vetoes an operating permit. The permit issued would not be a title V operating permit and, therefore, should not violate the CAAA provisions which prohibit such action. Therefore, this change should not be made.

Comment 198: The Department agrees that "off permit" provisions should not be reviewed by EPA since this is not required by EPA's regulations. Review of these changes should, however, continue under the state program.

Comment 199: Clearly, quantification must be performed for pollutants, both criteria and toxic pollutants, to provide levels of those pollutants from each emission source which exhibits "significant" emissions of either or both classes of pollutants. Conversely, for emission sources from which "insignificant" emission levels are expected (but which do emit one or more pollutants in "significant" quantities), ADEM does not expect unnecessary and unproductive effort by applicants to measure or otherwise quantify these emissions. Changes in the regulations which reflect this view should be made.

Comment 200: Although there is no provision for having emission trading under a cap, there is nothing prohibiting such trading. If an applicant requests such trading (as an alternate operating scenario), we would incorporate it into the permit if the proposal is enforceable and quantifiable. Therefore, the proposed change is not needed and should not be made.

Comment 202: The permit application shield should not be expanded to cover minor modifications nor should the shield apply to applications for which the applicant has not supplied timely additional information when requested. ADEM's current regulations require a permit prior to construction. In the proposed revisions, an applicant for a minor modification can begin construction after a 10-day review period, if desired. However, operation cannot begin until authorized by ADEM in a permit modification or an off-permit change. Therefore, there is no need for a shield. Also, since there is an automatic shield 60 days after receipt of the application, there must be an easy mechanism to remove the shield if the application is later found to incomplete and the applicant does not supply the necessary information in a timely fashion.

Comment 205: The comment suggests that a phrase be added to the renewal requirements which further limits the time period that an application may be required to be submitted prior to expiration. We do not think that the suggested language would be appropriate ,since requiring an application to be submitted more that 6 months in advance would be rare. Therefore, the change should not be made.

Comment 206: While the Department has in the past and plans to review and act upon major permit actions in much less time than 9 months, there is no need to state this in the regulations.

Comment 209: The Department agrees that the specific language that a responsible official must certify to should be in the regulations. Therefore, the change should be made.

Comment 210: We believe the language for reducing the permit fees when the surplus exceeds the next year is adequate. ADEM is evaluated on its performance in the Operating Permit program by EPA, by its own internal audits and by state auditing agencies Having another expensive audit performed would be wasteful. Therefore, these changes should not be made.

Comment 212: As a matter of efficiency, the Department will try to make the permitting process go as smooth as possible. However, we do not think that requiring notification of automatic shield nor requiring us to supply a completeness checklist to the applicant is appropriate. Therefore, this change should not be made.

Comment 213: ADEM acknowledges that there are situations during which continuing to exceed emission standards for a short period might be desirable when compared to the alternative of reducing or halting operation. However, these will be judged on a case-by-case basis under the emergency and upset provision of the regulations, and the suggested revision is unnecessary.

Part K - Final Regulations filed with the Legislative Reference Service

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Air Division

Chapter 335-3-10
Standards of Performance for New Stationary Sources

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335-3-10-.01 General.

(1) The Environmental Protection Agency Regulations, and the Appendices applicable thereto, governing Standards of Performance for New Stationary Sources (40 CFR 60 and Appendices) designated in Rules 335-3-10-.02 and 03 are incorporated by reference as they exist in 40 CFR 60 (1992), 57 FR 30654 (July 10, 1992), 57 FR 44496 (September 28, 1993), and 58 FR 40591 (July 29, 1993) as amended by the word or phrase substitutions given in Rule 335-3-10-.04. References for specific documents containing the complete text of subject regulations are given in Appendix C to these Regulations.

The materials incorporated by reference are available for purchase and inspection at the Department's offices at 1751 Cong. W. L. Dickinson Drive, Montgomery, Alabama 36109.

(2) Chapters 335-3-3, -4, -5, -6, -7, and -8 shall not apply to source categories subject to this Chapter for the specific pollutants to which a standard under this Chapter applies.

(3) Definitions. For purposes of this Chapter, the definitions listed in 40 CFR 60.2 will apply.

Author:
Statutory Authority: Code of Alabama 1975, §§ 22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: May 25, 1976.
Amended: Effective Date: February 13, 1985; June 9, 1987; June 16, 1988; September 21, 1989; November 1, 1990; March 28, 1991; July 31, 1991; September 19, 1991; October 24, 1991; December 28, 1993

335-3-10-.02 Designated Standards of Performance.

(1) Subpart D - Fossil Fuel-Fired Steam Generators for which construction is commenced after August 17, 1971.

(a) Subpart Da - Electric Utility Steam Generating Units for which construction is commenced after September 18, 1978.

(b) Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.

(c) Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.

(2) Reserved.

(3) Subpart E - Incinerators.

(a) Subpart Ea - Municipal Waste Combustors.

(4) Subpart F - Portland Cement Plants.

(5) Subpart G - Nitric Acid Plants.

(6) Subpart H - Sulfuric Acid Plants.

(7) Subpart I - Hot Mix Asphalt Facilities.

(8) Subpart J - Petroleum Refineries.

(9) Subpart K - Storage Vessels for Petroleum Liquids constructed after June 11, 1973 and prior to May 19, 1978.

(a) Subpart Ka - Storage Vessels for Petroleum Liquids constructed after May 18, 1978.

(b) Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 12, 1984.

(10) Reserved.

(11) Reserved.

(12) Subpart L - Secondary Lead Smelters.

(13) Subpart M - Secondary Brass and Bronze Ingot Production Plants.

(14) Subpart N - Iron and Steel Plants.

(a) Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for which construction is commenced after January 20, 1983.

(15) Subpart O - Sewage Treatment Plants.

(16) Subpart P - Primary Copper Smelters.

(17) Subpart Q - Primary Zinc Smelters.

(18) Subpart R - Primary Lead Smelters.

(19) Subpart S - Primary Aluminum Reduction Plants.

(20) Subpart T - Wet Process Phosphoric Acid Plants.

(21) Subpart U - Superphosphoric Acid Plants.

(22) Subpart V - Diammonium Phosphate Plants.

(23) Subpart W - Triple Superphosphate Plants.

(24) Subpart X - Granular Triple Superphosphate Storage Facilities.

(25) Subpart Y - Coal Preparation Plants.

(26) Subpart Z - Ferroalloy Production Facilities.

(27) Subpart AA - Steel Plants (Electric arc furnaces and dust-handling equipment).

(a) Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon Oxygen - Decarburization Vessels.

(28) Subpart BB - Kraft Pulp Mills.

(29) Subpart CC - Standards of Performance for Glass Manufacturing Plants.

(30) Subpart DD - Grain Elevators.

(31) Subpart EE - Surface Coating of Metal Furniture.

(32) Subpart FF - Reserved.

(33) Subpart GG - Stationary Gas Turbines.

(34) Subpart HH - Lime Manufacturing Plants.

(35) Subpart II - Reserved.

(36) Subpart JJ - Reserved.

(37) Subpart KK - Lead-Acid Battery Manufacture.

(38) Subpart LL - Metallic Mineral Processing Plants.

(39) Subpart MM - Automobile and Light-Duty Truck Surface Coating Operations.

(40) Subpart NN - Phosphate Rock Plants.

(41) Subpart OO - Reserved.

(42) Subpart PP - Ammonium Sulfate Manufacturing.

(43) Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.

(44) Subpart RR - Pressure Sensitive Tape and Label Surface Coating Industry.

(45) Subpart SS - Industrial Surface Coating - Large Appliances.

(46) Subpart TT - Metal Coil Surface Coating Operations.

(47) Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.

(48) Subpart VV - Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry.

(49) Subpart WW - Beverage Can Surface Coating Industry.

(50) Subpart XX - Bulk Gasoline Terminals.

(51) Subpart YY - Reserved.

(52) Subpart ZZ - Reserved.

(53) Subpart AAA - Reserved.

(54) Subpart BBB - Rubber Tire Manufacturing Industry.

(55) Subpart CCC - Reserved.

(56) Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.

(57) Subpart EEE - Reserved.

(58) Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.

(59) Subpart GGG - VOC Fugitive Emission Sources - Petroleum Refineries.

(60) Subpart HHH - Synthetic Fiber Production Facilities.

(61) Subpart III - VOC Emissions from SOCMI Air Oxidation Unit Processes.

(62) Subpart JJJ - Petroleum Dry Cleaners.

(63) Subpart KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.

(64) Subpart LLL - Standards of Performance for Onshore Natural Gas Processing: SO_2 Emissions.

(65) Subpart MMM - Reserved.

(66) Subpart NNN - VOC Emissions from SOCMI Distillation Operations.

(67) Subpart OOO - Nonmetallic Mineral Processing Plants.

(68) Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.

(69) Subpart QQQ - VOC Emissions from Petroleum Refinery Wastewater Systems.

(70) Subpart RRR - Reserved.

(71) Subpart SSS - Magnetic Tape Manufacturing Industry.

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(72) Subpart TTT - Industrial Surface Coating; Plastic Parts for Business Machines.

(73) Subpart UUU - Calciners and Dryers in Mineral Industries.

(74) Subpart VVV - Polymeric Coating of Supporting Substrates.

Author:
Statutory Authority: Code of Alabama 1975, §§ 22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: May 25, 1976.
Amended: Effective Date: June 23, 1981; February 13, 1985; April 15, 1987; June 16, 1988; September 21, 1989; November 1, 1990; March 28, 1991; July 31, 1991; September 19, 1991; October 24, 1991; December 28, 1993.

335-3-10-.03 Appendices to 40 CFR 60.

(1) Appendix A - Reference Method.

(2) Appendix B - Performance Specifications.

(3) Appendix F - Quality Assurance Procedures.

Author: Robert Cowne
Statutory Authority: Code of Alabama, 1975 §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8.
History: Effective Date: June 16, 1988.
Amended: Effective Date: November 1, 1990; March 28, 1991; July 31, 1991; September 19, 1991; October 24, 1991; December 28, 1993.

335-3-10-.04 Word or Phrase Substitutions. In all the standards designated in Rule 335-3-10-.02 substitute:

(1) Director for Administrator.

(2) Department for U. S. Environmental Protection Agency (except in references).

Author:
Statutory Authority: Code of Alabama, 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8.
History: Effective Date: May 25, 1976
Amended: Effective Date: February 13, 1985; June 16, 1988.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Air Division

Chapter 335-3-11
National Emission Standards for Hazardous Air Pollutants

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335-3-11-.01 General.

(1) The Environmental Protection Agency Regulations, and the Appendices applicable thereto, governing Hazardous Air Pollutants (40 CFR, Part 61 and Appendices) designated in Rule 335-3-11-.02 are incorporated by reference as they exist in 40 CFR 61 (1992), and 58 FR 3072 as amended by the word or phrase substitutions given in Rule 335-3-11-.03. References for specific documents containing the complete text of subject regulations are given in Appendix C to these Regulations.

The materials incorporated by reference are available for purchase and inspection at the Department's offices at 1751 Cong. W. L. Dickinson Drive, Montgomery, Alabama 36109.

(2) In the event of any conflict between the regulations contained in this Chapter and regulations contained in other chapters, the more stringent regulations will take precedence.

(3) Definitions. For purposes of this Chapter, the definitions listed in 40 CFR 61.02, Subpart A will apply.

Author:
Statutory Authority: Code of Alabama 1975, §§ 22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: May 25, 1976.
Amended: Effective Date: February 13, 1985; June 9, 1987; June 16, 1988; November 1, 1990; March 28, 1991; July 31, 1991; September 19, 1991; October 30, 1992. December 28, 1993.

335-3-11-.02 Designated Emission Standards.

(1) Subpart B - Radon-222 Emission from Underground Uranium Mines.

(2) Subpart C - Beryllium.

(3) Subpart D - Beryllium Rocket Motor Firing.

(4) Subpart E - Mercury.

(5) Subpart F - Vinyl Chloride.

(6) Reserved.

(7) Reserved.

(8) Reserved.

(9) Subpart I - Benzene Equipment Leaks

(10) Reserved.

(11) Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.

(12) Subpart M - Asbestos.

(13) Subpart N - Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants.

(14) Subpart O - Standard for Inorganic Arsenic Emissions from Primary Copper Smelters.

(15) Subpart P - Standard for Inorganic Arsenic Emission from Arsenic Trioxide and Metallic Arsenic Production Facilities.

(16) Reserved.

(17) Reserved.

(18) Reserved.

(19) Reserved.

(20) Reserved.

(21) Subpart V - Equipment Leaks (Fugitive Emission Sources).

(22) Subpart W - Radon-222 Emissions from Licensed Uranium Mill Tailings.

(23) Reserved.

(24) Subpart Y - Benzene Emissions from Benzene Storage Vessels.

(25) Reserved.

(26) Reserved.

(27) Subpart BB - Benzene Emissions from Benzene Transfer Operations.

(28) Reserved.

(29) Reserved.

(30) Reserved.

(31) Subpart FF - Benzene Emissions from Benzene Waste Operations.

Author:
Statutory Authority: Code of Alabama 1975, §§ 22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: May 25, 1976.
Amended: Effective Date: June 23, 1981; February 13, 1985; June 9, 1987; November 1, 1990; March 28, 1991; July 31, 1991; September 19, 1991; October 30, 1992; December 28, 1993.

335-3-11-.03 Appendices to 40 CFR 61.

Appendix B - Test Methods.

Author: Robert W. Cowne
Statutory Authority: Code of Alabama 1975, §§ 22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: June 16, 1988
Amended: Effective Date: March 28, 1991.

335-3-11-.04 Word or Phrase Substitutions. In all of the standards designated in Rule 335-3-11-.02 substitute:

(1) Director for Administrator.

(2) Department for U. S. Environmental Protection Agency (except in references).

335-3-11-.04

Author:
Statutory Authority: Code of Alabama 1975, §§ 22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: May 25, 1976.
Amended: Effective Date: February 13, 1985; June 16, 1988.

335-3-11-.05 Certification of Asbestos Abatement Contractors.

(1) Any person, firm, organization, or corporation who is the owner or operator of any asbestos removal project for which notification is required pursuant to the requirements of Section 335-3-11-.02(12) shall ensure that the parties executing the asbestos removal project are certified by the Department.

(2) Procedures for application for certification and recertification.

(a) An application for certification or recertification must be completed on forms that are supplied by the Department.

(b) Initial applications for certification may be submitted at any time after the adoption of this Rule. Applications for recertification must be submitted to the Department within a timeframe which is not greater than sixty (60) days or less than thirty (30) days prior to expiration of the existing certification.

(c) Applications shall include, at minimum, the following information:

1. Lists of supervisors and workers, including their accreditation numbers issued by the state-approved accreditation program.

2. A list of asbestos removal operations performed by the party during the previous twelve (12) months.

3. Assurance that all supervisors or workers used in asbestos removal operations employed by the party shall have a current accreditation by the state-approved accreditation program before performing any work inside or outside a removal site.

4. A written certification from the principal officer or person stating that he/she understands state regulations pertaining to asbestos removal and will abide by said regulations.

(d) The Department may issue a certificate of certification to a party if it has been determined that:

1. Each supervisor and worker involved in asbestos removal is accredited by the state-approved accreditation program.

2. All application forms and attachments are properly completed and have been submitted.

3. The application fees have been paid.

(e) The Department may deny certification if it determines that the applicant is unable or unwilling to fully comply with applicable requirements, procedures, rules and standards promulgated or established by the Commission or the Department. All notices regarding the denial of certification will be sent via certified mail.

(3) Parties must reapply annually in order to maintain proper certification.

(4) A copy of the party's current certification must be available at each of its removal sites.

(5) Annual accreditation of supervisors and workers is required.

(6) Copies of accreditation for every supervisor and worker must be kept at each removal site.

(7) The Department may revoke certification of any party duly certified if the party repeatedly fails to comply with applicable rules and standards or fails to comply with any certification requirements.

(8) The requirements of this Rule become enforceable 120 days after the effective date.

Author: Ludwig C. Hoffmann III
Statutory Authority: Code of Alabama 1975, §§ 22-28-14, 22-22A-5, 22-22A-6, 22-22A-8, and 22-39-5.
History: Effective Date: November 1, 1990.
Amended: Effective Date:

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Air Division

Chapter 335-3-14
Air Permits

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335-3-14-.01 General Provisions.

(1) Air Permit.

(a) Any person building, erecting, altering, or replacing any article, machine, equipment, or other contrivance, the use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall submit an application for an Air Permit at least 10 days prior to construction.

(b) Before any article, machine, equipment, or other contrivance described in Paragraph 335-3-14-.01(1)(a) may be operated or used, authorization shall be obtained from the Director in the form of an Air Permit. No Permit shall be granted for any article, machine, equipment or contrivance described in Paragraph 335-3-14-.01(1)(a), constructed or installed without notification as required by Paragraph 335-3-14-.01(1)(a), until the information required is presented to the Director and such article, machine, equipment or contrivance is altered, if necessary, and made to conform to the standards established by the Department.

(c) Any article, machine, equipment, or other contrivance described in Paragraph 335-3-14-.01(1)(a) which is presently operating (or which is not presently operating but which is capable of being operated) without an Air Permit may continue to operate (or may restart) only if its owner or operator obtains an Air Permit prior to a date to be set by the Director (or prior to restarting).

(d) Display of Air Permit. A person who has been granted an Air Permit for any article, machine, equipment,

or other contrivance shall keep such permit under file or on display at all times at the site where the article, machine, equipment, or other contrivance is located and will make such a permit readily available for inspection by any and all persons who may request to see it.

(e) The Director shall have the authority to decide cases where an article, machine, equipment, or other contrivance is not clearly subject to nor exempt from the application of this Rule. In addition, the Director may rule that a particular article, machine, equipment, or other contrivance is subject to the application of this Rule even though it is exempt from the system according to Paragraph 335-3-14-.01(1)(a) and Section 335-3-14-.01(5) of this Rule. The operator or builder of such an article, machine, equipment, or other contrivance may appeal the Director's classification to the Commission, which shall overrule the Director only if it is shown that he acted arbitrarily and contrary to the purposes of the Act.

(f) Upon completion of construction by a new facility, the Director shall, within a reasonable period of time, dispatch an inspector to the facility in question. If the inspector determines that the facility has been constructed according to the specifications as set forth under the Air Permit or that any changes to the facility would reduce or affect to an unsubstantial degree that quantity of air contaminants emitted by the facility, and if a reviewing officer of the Division agrees with this conclusion, then the Director shall authorize initial operation of the facility until an official inspection of the facility under actual operating conditions can be made and the results reviewed or until the Air Permit is suspended or revoked by the Director. The Director may authorize initial operation of the facility without an inspection if upon completion of the construction, an owner or operator familiar with the application for an Air Permit submits a letter to the Director, testifying that the construction under application has been completed and is in accordance with the specification as set down in the Air Permit. The Director is empowered to reject that testimony if the Director decides that the owner or operator's qualifications are insufficient to allow him to accurately and completely assess the equipment in question. An owner or operator may appeal any such judgment to the Commission.

(g) The Director may issue an Air Permit subject to conditions which will bring the operation of any article, machine, equipment, or other contrivance within the standards of Section 335-3-14-.03(1) in which case the conditions shall be specified in writing. Commencing construction or operation under such an Air Permit shall be deemed acceptance of all the conditions specified. The

Director shall issue an Air Permit with revised conditions upon receipt of a new application, if the applicant demonstrates that the article, machine, equipment, or other contrivance can operate within the standards of Section 335-3-14-.03(1) under the revised conditions.

(h) Reserved.

(i) Reserved.

(j) Reserved

(k) An existing facility which holds a Synthetic Minor Operating Permit issued under ADEM Admin. Code R. 335-3-15 or an Operating Permit issued under ADEM Admin. Code R. 335-3-16 is exempt from the requirements of this chapter provided that:

1. the Synthetic Minor Operating Permit is modified as required by ADEM Admin Code R. 335-3-15 prior to the initial operation of any new or modified sources, or

2. the Operating Permit is modified as required by ADEM Admin. Code R. 335-3-16 and any modifications are not subject to the requirments of ADEM Admin. Code R. 335-3-14-.04, or

3. for a modification which is subject to the requirments of ADEM Admin. Code R. 335-3-14-.04, the Operating Permit is issued prior to commencement of construction of the modification, and the Operating Permit fulfills all requirements of ADEM Admin. Code R. 335-3-14-.04, or

4. the Operating Permit is modified as required by ADEM Admin Code R. 335-3-16 and any modifications are not subject to the requirments of ADEM Admin. Code R. 335-3-14-.05, or

5. for a modification which is subject to the requirments of ADEM Admin. Code R. 335-3-14-.05, the Operating Permit is issued prior to commencement of construction of the modification, and the Operating Permit fulfills all requirements of ADEM Admin. Code R. 335-3-14-.05.

(2) Provision of Sampling and Testing Facilities. A person operating or using any article, machine, equipment or other contrivance for which these rules and regulations require a permit shall provide and maintain such sampling and testing facilities as specified in the Air Permit.

(3) The holder of a Permit under this Rule shall

comply with conditions contained in such Permit as well as all applicable provisions of these rules and regulations.

(4) Transfer. An Air Permit shall not be transferable whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another.

(5) Exemptions. From time to time the Director may specify certain classes or sizes of articles, machines, equipment, or other contrivances which would normally be subject to the requirements to apply for an Air Permit as being exempt from the requirement to apply for such permits. Exempt sources are subject in every other way to these rules and regulations.

(6) Delegation of Air Permit requirements to Local Air Pollution Control Programs.

(a) Local air pollution control programs may receive delegation of authority from the Director to administer the general Air Permit requirements of Section 335-3-14-.01(1) within their jurisdiction provided the local air pollution control program:

1. adopts regulations insuring applicants are required to satisfy the same requirements as contained in the Department's regulations; and

2. adopts regulations which require the Director to be provided with an opportunity to review the permit application, the analysis of the permit, and proposed permit conditions at least 10 days prior to issuance of an Air Permit.

(b) Local air pollution control programs may receive delegation of authority from the Director to administer the Air Permit requirements of Section 335-3-14-.05 and Rule 335-3-14-.04 within their jurisdiction provided:

1. the requirements of Subparagraph 335-3-14-.01(6)(a)(1) are met; and

2. the local air pollution control program demonstrates that it has the necessary manpower and technical expertise to implement the requirements of said regulations; and

3. the local air pollution control program adopts regulations which require that the local air pollution control program shall provide the Director a copy of preliminary determinations and public comment notices for all permits issued pursuant to Section 335-3-14-.05 and Rule

335-3-14-.04 at the same time the notice is forwarded for publication in the newspaper.

(c) If the Director of ADEM determines that local program procedures for implementing all the portions of Section 335-3-14-.01(1), Section 335-3-14-.05 and Rule 335-3-14-.04 are inadequate, or are not being effectively carried out, any authority delegated to the local programs to administer Section 335-3-14-.01(1), Section 335-3-14-.05, and Rule 335-3-14-.04 may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the local air pollution control program.

(d) The Director reserves the authority contained in Section 335-3-14-.02(4), to revoke any Air Permit issued pursuant to this Section.

(e) Any Air Permit issued by a local air pollution control program, including all conditions contained therein, is enforceable by the ADEM.

(7) Public Participation

(a) Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice and also to persons on a mailing list developed by the Department for persons desiring notice of permit action, including persons who have requested in writing to be on such a list, under the following circumstances:

1. Construction at a Greenfield Site.

(i) For the purposes of this paragraph, a "Greenfield Site" shall mean a new development or the initial operation of a new facility.

2. The Director, at his discretion, may require Public Notification for any application received in accordance with Paragraph 335-3-14-.01(1)(a).

(b) Public comments will be received by the Department for a period of 15 days following the publication of the public notice.

(c) Public Notice will be held in accordance with the requirments of 335-3-14-.04 and 335-3-14-.05 for any application which is subject to the requirements of 335-3-14-.04 or 335-3-14-.05.

(d) Construction of any article, machine, equipment,

or other contrivance as described in Paragraph 335-3-14-.01(1)(a) shall not commence until after an Air Permit is issued if a public notice is required under this Section.

Author: James W. Cooper and John E. Daniel
Statutory Authority: Code of Alabama 1975, §§ 22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: January 18, 1972.
Amended: April 3, 1979; February 13, 1985; December 28, 1993.

335-3-14-.02 Permit Procedure.

(1)(a) Applications. Every application for an Air Permit required under Section 335-3-14-.01(1) shall be filed in the manner and form prescribed by the Director and shall give all the information necessary to enable the Director to make the determination required by Rule 335-3-14-.03.

(b) Cancellation of Applications. An Air Permit authorizing construction shall expire and the application shall be canceled two years from the date of issuance of the Air Permit if the construction has not begun.

(2) Action on Application. The Director shall act, within a reasonable time, on an application for an Air Permit and shall notify the applicant in writing of its approval, conditional approval, or denial.

(3) Denial of Application. In the event of a denial of an Air Permit, the Director shall notify the applicant in writing of the reason therefor. Service of this notification may be made in person or by mail, and such service may be proved by the written acknowledgement of the persons served or affidavit of the person making the service. The Director shall not accept a further application unless the applicant has complied with the objections specified by the Director as its reasons for denial of the Air Permit.

(4) Revocation of Air Permits. Any Air Permit granted by the Director may be revoked for any of the following causes:

(a) failure to comply with any conditions of the permit;

(b) failure to notify the Director prior to intended use or operation of any article, machine, equipment, or other contrivance described in Paragraph 335-3-14-.01(1)(a);

(c) failure to establish and maintain such records, make such reports, install, use and maintain such monitoring

equipment or methods; and sample such emissions in accordance with such methods at such locations, intervals and procedures as the Director may prescribe in accordance with Section 335-3-1-.04(2);

(d) failure to comply with any provisions of any Departmental administrative order issued concerning the permitted source or facility.

(e) failure to allow employees of the Department upon proper identification:

1. to enter any premises where any article, machine, equipment, or other contrivance described in Section 335-3-14-.01(1) is located or in which any records are required to be kept under provisions of the permit and/or the rules and regulations;

2. to have access to and copy any records required to be kept under provisions of the permit and/or the rules and regulations;

3. to inspect any monitoring equipment or practices being maintained pursuant to the permit and/or rules and regulations; and

4. to have access to and sample any discharge of air contaminants resulting directly or indirectly from the operation of any article, machine, equipment, or other contrivance described in Section 335-3-14-.01(1).

(f) failure to comply with the rules and regulations of the Department.

(g) for any other cause, after a hearing which establishes, in the judgment of the Department, that continuance of the permit is not consistent with the purpose of this Act or regulations under it.

(5) Expiration of Air Permits. Air Permits shall expire immediately following:

(a) the issuance of a Synthetic Minor Operating Permit required by ADEM Admin. Code R. 335-3-15 or an Operating Permit required by ADEM Admin Code R. 335-3-16 which pertains to the article, machine, equipment, or other contrivance regulated by the Air Permit.

(b) the final denial of a Synthetic Minor Operating Permit required by ADEM Admin Code R. 335-3-15 or an Operating Permit required by ADEM Admin. Code R. 335-3-16 which pertains to the article, machine equipment, or other contrivance regulated by the Air Permit.

(c) the failure of a facility to apply for a Synthetic Minor Operating Permit or modification to an existing Synthetic Minor Operating Permit as required by ADEM Admin. Code R. 335-3-15 or the failure of a facility to apply for an Operating Permit or modification to an existing Operating Permit as required by ADEM Admin. Code R. 335-3-16.

Author: James W. Cooper and John E. Daniel
Statutory Authority: Code of Alabama 1975, ÏÏ 22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: January 18, 1972.
Amended: April 3, 1979; February 13, 1985, December 28, 1993.

335-3-14-.03 Standards for Granting Permits.

(1) General Standards.

(a) The Director shall deny a permit if the applicant does not show that every article, machine, equipment, or other contrivance, the use of which may cause the issuance of air contaminants, is so designed, controlled, or equipped with such air pollution control equipment, that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of these rules and regulations.

(b) The Director shall deny a permit if the applicant does not present, in writing, a plan whereby the emission of air contaminants by every article, machine, equipment, or other contrivance described in the permit application, will be reduced during periods of an Air Pollution Alert, Air Pollution Warning, and Air Pollution Emergency in accordance with the provisions of Chapter 335-3-2, where such a plan is required.

(c) Before an Air Permit is granted, the Director may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the article, machine, equipment, or other contrivance described in the Air Permit. In the event of such a requirement, the Director shall notify the applicant in writing of the required size, number, and location of the sampling platform; the access to the sampling platform; and the utilities for operating and sampling and testing equipment.

(d) The Director may also require the applicant to install, use, and maintain such monitoring equipment or methods; sample such emissions in accordance with such

methods, at such locations, intervals, and procedures as may be specified; and provide such information as the Director may require.

(e) Before acting on an application for an Air Permit, the Director may require the applicant to furnish further information or further plans or specifications.

(f) If the Director finds that the article, machine, or other contrivance has been constructed not in accordance with the Air Permit, and if the changes noted are of a substantial nature in that the amount of air contaminants emitted by the article, machine, equipment, or other contrivance may be increased, or in that the effect is unknown, then he shall revoke the Air Permit. The Director shall not accept any further application for an Air Permit until the article, machine, equipment, or other contrivance has been reconstructed in accordance with said Air Permit or until the applicant has proven to the satisfaction of the Director that the change will not cause an increase in the emission of air contaminants.

(g)1. The Director shall deny an Air Permit where he determines that the construction and operation of such source will interfere with attaining or maintaining any primary or secondary standard established by Section 335-3-1-.03(1). A new source or modification will be considered to interfere with attaining or maintaining a standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the NAAQS:

POLLUTANT AVERAGING TIME

	Annual	24 hours	8 hours	3 hours	1 hour
SO_2	1.0 $\mu g/m^3$	5 $\mu g/m^3$		25 $\mu g/m^3$	
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$			
NO_2	1.0 $\mu g/m^3$				
CO			0.5 mg/m^3		2 mg/m^3

2. A proposed major source or major modification subject to this Paragraph may reduce the impact of its emissions upon air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact where this impact would otherwise cause or contribute to a violation of any national ambient air

quality standard or exceed the significance levels of Subparagraph 335-3-14-.03(1)(g)1. above. In the absence of such emission reductions, the Director shall deny the proposed construction.

3. The requirements of Paragraph 335-3-14-.03(1)(g) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to Section 107 of the federal Clean Air Act.

(h) Exceptions to violations of emissions limits

1. The Director may, in the Air Permit, exempt on a case by case basis any exceedances of emission limits which cannot reasonably be avoided, such as during periods of start-up, shut-down or load change.

2. Emergency provision

(i) An "emergency" means any situation arising from sudden and reasonably unforseeable events beyond the control of the facility, including acts of God, which situation require immediate corrective action to restore normal operation, and that causes the facility to exceed a technology based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(ii) Exceedances of emission limitations during emergencies (as defined above) at a facility may be exempted as being violations provided that:

(I) the permittee can identify the cause(s) of the emergency;

(II) the permitted facility was at the time being properly operated;

(III) during the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements of the permit;

(IV) the permittee submitted notice of the emergency to the Department within 2 working days of the time when the emissions limitations were exceeded due to the emergency; and

(V) the permitee immediately documented the emergency exceedance in an "Emergency Log", which shall be maintained for 5 years in a form suitable for inspection upon request by a representative of the Department.

(iii) The Director shall be the sole determiner of whether an emergency has occurred.

(iv) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

(i) A determination may be made by the Director to deny a permit application if the applicant operates other permitted facilities or sources within the state which are in substantial noncompliance as determined by the Director, until such noncompliance is corrected or if the Director determines that a permit that results in compliance with applicable air pollution control standards could not be issued, or if issued, could not be complied with.

(2) Stack Heights

(a) Definitions. For purposes of this Section, the following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

1. "Emission limitation" and "emission standard" mean a requirement, established by ADEM or the EPA Administrator, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

2. "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

3. "A stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

4. "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) Using that portion of a stack which exceeds good engineering practice stack height;

(ii) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) Increasing final exhaust gas plume rise by manipulating source-process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(iv) The preceding sentence does not include:

(I) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(II) The merging of exhaust gas streams where:

I. The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

II. After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

III. Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source:

(III) Smoke management in agricultural or silvicultural prescribed burning programs:

(IV) Episodic restrictions on residential woodburning and open burning; or

(V) Techniques under Subdivision 335-3-14-.03(2)(a)4.(iii) which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

5. "Good engineering practice" (GEP) stack height means the greater of:

(i) 65 meters measured from the ground-level elevation at the base of the stack:

(ii)(I) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR 51 and 52, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

$$H_g = 2.5H.$$

(II) For all other stacks,

$$H_g = H + 1.5\ L,$$

where

H_g = good engineering practice stack height measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width of nearby structure(s),

provided that the Director may require the use of a field study or fluid model to verify GEP stack height for the source; or

(iii) The height demonstrated by a fluid model or a field study approved by the Director, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or nearby terrain features.

6. "Nearby" as used in Subparagraph 335-3-14-.03(2)(a)5. of this Paragraph is defined for a specific structure or terrain feature and

(i) for purposes of applying the formulas provided in Subdivision 335-3-14-.03(2)(a)5.(ii) means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and

(ii) for conducting demonstrations under Subdivision 335-3-14-.03(2)(a)5.(iii) means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (h_t) of the feature, not to exceed 2 miles if such feature achieves a height (h_t) 0.8 km from the stack that is at least 40 percent of the GEP stack height determined by the formula provided in Subdivision 335-3-14-.03(2)(a)5.(ii)(II) or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

7. "Excessive concentration" is defined for the purpose of determining GEP stack height under Subdivision 335-3-14-.03(2)(a)5.(iii) and means:

(i) for sources seeking credit for stack height exceeding that established under Subdivision 335-3-14-.03(2)(a)5.(ii), a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than a NAAQS. For sources subject to the PSD program (Rule 335-3-14-.04), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emissions rate to be used in making demonstrations under this Rule shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in

consultation with the source owner or operator;

(ii) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under Subdivision 335-3-14-.03(2)(a)5.(ii), either:

(I) a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects as provided in Subdivision, 335-3-14-.03(2)(a)7.(i), except that the emission rate specified elsewhere in these regulations (or, in the absence of such a limit, the actual emission rate) shall be used, or

(II) the actual presence of a local nuisance caused by the existing stack, as determined by the Director; and

(iii) for sources seeking credit after January 12, 1979, for a stack height determined under Subdivision 335-3-14-.03(2)(a)5.(ii) where the Director requires that use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in Subdivision 335-3-14-.03(2)(a)5.(ii), a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(b) Before acting on any Air Permit, the Director shall require that the degree of emission limitation required of any source for control of any air pollutants shall not be affected by so much of any source's stack height that exceeds GEP or by any other dispersion technique, except as provided in Paragraph 335-3-14-.03(2)(c).

(c) The provisions of Paragraph 335-3-14-.03(2)(b) shall not apply to stack heights in existence, or dispersion techniques implemented, prior to December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed or for which major modifications, as defined pursuant to Subparagraphs 335-3-14-.05(2)(d) and 335-3-14-.04(2)(b)1., were carried out after December 31, 1970.

(d) If any existing source, after appropriate application of the preceding limitations and provisions, is found to exceed or potentially exceed a NAAQS or PSD

increment, when operating within previously established emission limitations, the emissions limitations applicable to that source shall be modified so as to eliminate and prevent the exceedance.

(e) If any new source or source modification, after appropriate application of the preceding limitations and provisions, is predicted to exceed a NAAQS or PSD increment when evaluated under emission limitations consistent with other applicable rules and regulations, the emission limitations considered shall be deemed inadequate and different emission limits, based on air quality considerations, shall be made applicable.

(f) If any source provides a field study or fluid modeling demonstration proposing a GEP stack height greater than that allowed by Subdivision 335-3-14-.03(2)(a)5.(i) and 335-3-14-.03(2)(a)5.(ii), then the public will be notified of the availability of the study and provided the opportunity for a public hearing before any new or revised emission limitation or permit is approved.

(g) The actual stack height used or proposed by a source shall not be restricted in any manner by requirements of this Section.

Author: James W. Cooper and John E. Daniel
Statutory Authority: Code of Alabama 1975, §§ 22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.
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335-3-14-.04 Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration Permitting (PSD))

(1) Effective Date. The requirements of this Rule shall be effective upon approval by the Environmental Protection Agency (EPA).

(2) Definitions. For the purposes of this Rule only, the following terms will have meanings ascribed in this Section:

(a)1. "Major Stationary Source" shall mean:

(i) Any of the following stationary sources (see Paragraph 335-3-14-.04(2)(e)) of air pollutants which emits, or has the potential to emit (see Paragraph 335-3-14-.04(2)(d)), 100 tons per year or more of any pollutant

subject to regulation under the CAA, as amended, 42 U.S.C. 7401, et seq.: fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; coal cleaning plants (with thermal dryers); kraft pulp mills; portland cement plants; primary zinc smelters; iron and steel mill plants; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per day; hydrofluoric, sulfuric and nitric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; coke oven batteries; sulfur recovery plants; carbon black plants (furnace process); primary lead smelters; fuel conversion plants; sintering plants; secondary metal production plants; chemical process plants; fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input; petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; taconite ore processing plants; glass fiber processing plants; and charcoal production plants;

(ii) Notwithstanding the stationary source size specified in Subdivision 335-3-14-.04(2)(a)(1)(i), any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the CAA; or

(iii) Any physical change that would occur at a stationary source not otherwise qualifying under Rule (a) as a major stationary source, if the changes would constitute a major stationary source by itself.

2. A stationary source that is considered major for VOC shall be considered major for ozone.

(b)1. "Major Modification" shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant (see Paragraph 335-3-14-.04(2)(w)) net emissions increase (see Paragraph 335-3-14-.04(2)(c)) of any pollutant subject to regulation under the CAA.

2. Any net emissions increase that is significant for VOC shall be considred significant for ozone.

3. A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (P.L. 93-

319, 15 U.S.C. 791 note) or any superseding legislation, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (June 10, 1920, P.L. 280, 16 U.S.C. 791a);

(iii) Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(I) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975.

(II) The source is approved to use under any permit issued under the Federal Prevention of Significant Deterioration ("PSD") regulations (40 CFR 52.21) or under regulations of this Rule;

(vi) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975.

(vii) Any change in ownership at a stationary source.

(c)1. "Net Emissions Increase" shall mean the amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions (see Paragraph 335-3-14-.04(2)(u)) from a particular physical change or change in method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

2. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(i) The date five (5) years before construction (see Paragraph 335-3-14-.04(2)(h)) on the particular change commences (see Paragraph 335-3-14-.04(2)(i)); and

(ii) The date that the increase from the particular change occurs.

3. An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit for the source under this Rule, which is in effect when the increase in actual emissions from the particular change occurs.

4. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date (see Paragraph 335-3-14-.04(2)(n)2.) is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

5. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

6. A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions (see Paragraph 335-3-14-.04(2)(p)), whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable (see Paragraph 335-3-14-.04(2)(q)) at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

7. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(d) "Potential To Emit" shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions (see Paragraph 335-3-14-.04(2)(r)) do not count in determining the potential to emit of a stationary source.

(e) "Stationary Source" shall mean any building,

structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the CAA.

(f) "Building, Structure, Facility, or Installation" shall mean all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(g) "Emissions Unit" shall mean any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the CAA.

(h) "Construction" shall mean any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(i) "Commence" as applied to construction of a major stationary source or major modification shall mean that the owner or operator has all necessary preconstruction approvals or permits (see Paragraph 335-3-14-.04(2)(j)) and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction (see Paragraph 335-3-14-.04(2)(k)) of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(j) "Necessary Preconstruction Approvals or Permits" shall mean those permits or approvals required under Alabama air quality control laws and regulations which are part of the State Implementation Plan.

(k) "Begin Actual Construction" shall mean, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying

underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(l) "Best Available Control Technology (BACT)" shall mean an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the CAA which would be emitted from any proposed major stationary source or major modification which the Director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR 60 and 61. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

(m)1. "Baseline Concentration" shall mean that ambient concentration level which exists in the baseline area (see Paragraph 335-3-14-.04(2)(o)) at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(i) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in Subparagraph 335-3-14-.04(2)(m)2.;

(ii) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

2. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(i) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(ii) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

(n)1. "Major Source Baseline Date" means:

(i) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(ii) In the case of nitrogen dioxide, February 8, 1988.

2. "Minor Source Baseline Date" means the earliest date after the trigger date on which the first complete (see Paragraph 335-3-14-.04(2)(v)) application is submitted by a major stationary source or major modification subject to the requirements of Federal PSD regulations or this Part. The trigger date is:

(i) In the case of particulate matter and sulfur oxides, August 7, 1977, and

(ii) In the case of nitrogen dioxide, February 8, 1988.

3. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(i) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1) (D) or (E) of the CAA for the pollutant on the date of its complete application under Federal PSD regulations or this Rule.

(ii) In the case of a major stationary source, the pollutant would be emitted in significant amounts or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(o) "Baseline Area" shall mean any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1) (D) or (E) of the CAA in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) microgram per cubic meter (annual average) of the pollutant for which the minor source baseline date is established.

(p) "Allowable Emissions" shall mean the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 40 CFR 60 and 61;

2. The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(q) "Enforceable" shall mean all limitations and conditions which are enforceable, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within the State Implementation Plan and any permit requirements established pursuant to 40 CFR 51.18, 40 CFR 52.21 or this Chapter.

(r) "Secondary Emissions" shall mean emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this Rule, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

1. Emissions from ships or trains coming to or from the new or modified stationary source; and

2. Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(s) "Innovative Control Technology" shall mean any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

(t) "Fugitive Emissions" shall mean those emissions

which could not reasonably pass through a stack, chimney, vent, roof monitor, or other functionally equivalent opening.

(u)1. "Actual Emissions" shall mean the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with Subparagraphs 335-3-14-.04(2)(u)(2) through (u)(4) below.

2. In general, actual emissions as of any given date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the given data and which is representative of normal source operation. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit which has not begun normal operations on the given date as determined in Subparagraph 335-3-14-.04(2)(u)2., actual emissions shall equal the potential to emit of the unit on that date.

(v) "Complete" shall mean, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(w)1. "Significant" shall mean, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate (tons per year)		
Carbon monoxide	100	
Nitrogen oxides	40	
Sulfur dioxide	40	
Particulate matter	25	
PM_{10}	15	
Ozone	40	(of VOC)
Lead	0.6	
Fluorides	3	
Sulfuric acid mist	7	
Hydrogen sulfide (H_2S)	10	
Total reduced sulfur (including H_2S)	10	

2. Reserved.

3. Notwithstanding Subparagraph 335-3-14-.04(2)(w)1., significant shall mean any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within ten (10) kilometers of a Class I area and have an impact on such area equal to or greater than one (1) microgram per cubic meter (24-hour average).

(x) "Federal Land Manager" shall mean, with respect to any lands in the United States, the Secretary of the Department with authority over such lands.

(y) "High Terrain" shall mean any area having an elevation 900 feet or more above the base of the stack of a source.

(z) "Low Terrain" shall mean any area other than high terrain.

(aa) "Indian Governing Body" shall mean the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(bb) "Indian Reservation" shall mean any Federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(cc) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

(dd) "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

(ee) "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(3) Ambient Air Increments. In areas designated as Class I, II or III, increases in pollutant concentration

over the baseline shall be limited to the following:

Maximum Allowable Increase
(micrograms per cubic meter)

Class I

Pollutant

Total suspended particulates:

Annual geometric mean	5
24-hour maximum	10

Sulfur dioxide:

Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25

Nitrogen dioxide:

Annual arithmetic mean	2.5

Class II

Total suspended particulates:

Annual geometric mean	19
24-hour maximum	37

Sulfur dioxide:

Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

Nitrogen dioxide:

Annual arithmetic mean	25

Class III

Total suspended particulates:

Annual geometric mean	37
24-hour maximum	75

Sulfur dioxide:

Annual arithmetic mean	40

24-hour maximum..... 182
3-hour maximum..... 700

Nitrogen dioxide:

Annual arithmetic mean..... 50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(4) Ambient Air Ceilings. No concentration of a pollutant shall exceed:

(a) The concentration permitted under the National Secondary Ambient Air Quality Standard, or

(b) The concentration permitted under the National Primary Ambient Air Quality Standard, whichever concentration is lowest for the pollutant for a period of exposure.

(5) Area Classifications.

(a) The following area, which was in existence on August 7, 1977, shall be a Class I area and may not be redesignated:

The Sipsey Wilderness Area, located in Franklin, Winston, and Lawrence counties, Alabama.

(b) Any other area is initially designated Class II:

(6) Exclusions from Increment Consumption.

(a) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

1. Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

2. Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

3. Concentrations of particulate matter attributable

to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

4. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

5. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the EPA as being exempt from increment consumption.

(b) No exclusion of such concentrations shall apply for more than five (5) years after the effective date of the order to which Paragraph 335-3-14-.04(6)(a)1. or the plan to which Paragraph 335-3-14-.04(6)(a)2. refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply for more than five (5) years after the later of such effective dates.

(7) Reserved.

(8) Review of Major Stationary Sources and Major Modification - Source Applicability and Exemptions.

(a) No major stationary source or major modification shall begin actual construction unless, as a minimum, requirements contained in Sections 335-3-14-.04(9) through 335-3-14-.04(17) of this Rule have been met.

(b) The requirements contained in Sections 335-3-14-.04(9) through 335-3-14-.04(17) shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the CAA that it would emit, except as this Section would otherwise allow.

(c) The requirements contained in Sections 335-3-14-.04(9) through 335-3-14-.04(17) apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassified under Section 107(d)(1) (D) or (E) of the CAA.

(d) The requirements contained in Sections 335-3-14-.04(9) through 335-3-14-.04(17) shall not apply to a major stationary source or major modification, if:

1. Reserved.

2. Reserved.

3. Reserved.

4. Reserved.

5. Reserved.

6. The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution; or

7. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification, and the source does not belong to any of the following categories:

(i) Coal cleaning plants (with thermal dryers);
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants (furnace process);
(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA; or

8. The source is a portable stationary source which has previously received a permit under this Rule; and

(i) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(ii) The emissions from the source would not exceed its allowable emissions; and

(iii) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(iv) Reasonable notice is given to the Director prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Director not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the Director.

(e) The requirements of Sections 335-3-14-.04(9) through 335-3-14-.04(17) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the CAA.

(f) The requirements of Sections 335-3-14-.04(10), 335-3-14-.04(12), and 335-3-14-.04(14) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the source or the net emissions increase of that pollutant from the modification:

1. Would impact no Class I area and no area where an applicable increment is known to be violated, and

2. Would be temporary.

(g) The requirements of Sections 335-3-14-.04(10), 335-3-14-.04(12), and 335-3-14-.04(14) as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the CAA from the modification after the application of BACT would be less than 50 tons per year.

(h) The Director may exempt a stationary source or

modification from the requirements of Section 1335-3-14-.04(12) with respect to monitoring for a particular pollutant if:

1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts which are less than the following amounts:

Carbon monoxide - 575 ug/m^3, 8-hour average;
Nitrogen dioxide - 14 ug/m^3, annual average;
Total suspended particulate - 10 ug/m^3, 24-hour average;
PM_{10} - 10 ug/m^3, 24-hour average
Sulfur dioxide - 13 ug/m^3, 24-hour average;
Ozone;[1]
Lead - 0.1 ug/m^3, 3-month average;
Fluorides - 0.25 ug/m^3, 24-hour average;
Total reduced sulfur - 10 ug/m^3, 1-hour average;
Hydrogen sulfide - 0.2 ug/m^3, 1-hour average;

or

2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Subparagraph 335-3-14-.04(8)(h)1., or the pollutant is not listed in Subparagraph 335-3-14-.04(8)(h)1.

3. The owner or operator of the stationary source or modification submits an application under this Section that the Director determines is complete, except with respect to the requirements for monitoring PM_{10} in Section 335-3-14-.04(12), on or before June 1, 1988. If a complete permit application is received after June 1, 1988, but not later than December 1, 1988, the requirements for PM_{10} monitoring under Section 335-3-14-.04(12) apply in that data shall have been gathered over at least the period from February 1, 1988 to the date the complete application is received, except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months) then the shorter period of data gathering will suffice to meet the requirements of Section 335-3-14-.04(12).

(i) Reserved.

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[1]No de minimus air quality level is provided for ozone. However, any net increase of 100 tons per year or more of VOC subject to Rule 335-3-14-.04 would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

(j) Reserved.

(k) At the discretion of the Director, the requirements for air quality monitoring of PM_{10} in Subparagraphs 335-3-14-.04(12)(a)1. through 4. may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this Rule on or before June 1, 1988 and the Director subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring PM_{10} in Subparagraphs 335-3-14-.04(12)(a)1. through 4.

(l) The requirements for air quality monitoring of PM_{10} in Subparagraphs 335-3-14-.04(12)(a)2. and 4. and Paragraph 335-3-14-.04(12)(c) shall apply to a particular source or modification if the owner or operator of the source of modification submits an application for permit under this Rule after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under Subparagraph 335-3-14-.04(12)(a)8., except that if the Director determines that a complete and adequate analysis can be accomplished with monitoirng data over a shorter period (not to be less than 4 months), the data that Subparagraph 335-3-14-.04(12(a)3. requires shall have been gathered over that shorter period.

(9) Control Technology Review.

(a) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable limitation standard and standard of performance under 40 CFR 60 and 61.

(b) A new major stationary source shall apply BACT for each pollutant subject to regulation under the CAA that it would have the potential to emit in significant amounts.

(c) A major modification shall apply BACT for each pollutant subject to regulation under the CAA for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(d) For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At

such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.

(10) Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(a) Any National Ambient Air Quality Standard in any air quality control region; or

(b) Any applicable maximum allowable increase over the baseline concentration in any area.

(11) Air Quality Models.

(a) All estimates of ambient concentrations required under this Section shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models". (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711)

(12) Air Quality Analysis.

(a) Preapplication Analysis.

1. Any application for a permit under this Rule shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(i) For the source, each pollutant that it would have the potential to emit in a significant amount;

(ii) For the modification, each pollutant for which it would result in a significant net emissions increase.

2. With respect to any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Director determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

3. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether

emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

4. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year and shall represent the year preceding receipt of the application, except that, if the Director determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

5. Reserved.

6. The owner or operator of a proposed stationary source or modification of VOC who satisfies all conditions of Section 335-3-14-.05 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under Paragraph 335-3-14-.04(12)(a).

7. For any application that becomes complete, except as the requirements of Subparagraph 335-3-14-.04(12)(a)3. and 4. pertaining to PM_{10}, after December 1, 1988 and no later than August 1, 1989 the data that Subparagraph 335-3-14-.04(12)(a)3. requires shall have been gathered over at least the period from August 1, 1988 to the date the application becomes otherwise complete, except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that Subparagraph 335-3-14-.04(12)(a)3. requires shall have been gathered over that shorter period.

8. With respect to any requirements for air quality monitoring of PM_{10} under Paragraphs 335-3-14-.04(8)(k) and (l), the owner or operator of the source or modification shall use a monitoring method approved by the Director and shall estimate the ambient concentrations of PM_{10} using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Director.

(b) Post-construction Monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Director determines is necessary to determine the impact for said source or modification may have, or is having, on air quality in any area.

(c) Operations of Monitoring Stations. The owner or operator of a major stationary source or major modification

shall meet Federal monitoring quality assurance requirements during the operation of monitoring stations for purposes of satisfying Section 335-3-14-.04(12).

(d) Visibility monitoring. The Director may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the Director deems necessary and appropriate.

(13) Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or to make any determination required under this Rule.

(a) With respect to a source or modification to which Sections 335-3-14-.04(9), 335-3-14-.04(10), 335-3-14-.04(12), and 335-3-14-.04(14) apply, such information shall include:

1. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

2. A detailed schedule for construction of the source or modification;

3. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates and any other information necessary to determine that BACT would be applied.

(b) Upon request of the Director, the owner or operator shall also provide information on:

1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

2. The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

(14) Additional Impact Analyses.

(a) The owner or operator shall provide an analysis of the impact on visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on

vegetation having no significant commercial or recreational value.

(b) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

(15) Sources Impacting Federal Class I Areas - Additional Requirements.

(a) Notice to Federal Land Managers and to EPA. The Director shall provide notice of any permit application for a proposed major stationary source or major modification the emissions from which would affect a Class I area to EPA, the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within any such area. The Director shall provide such notice promptly after receiving the application. The Director shall also provide EPA, the Federal Land Manager and such Federal officials with notice of every action related to the consideration of such permit.

(b) The Director shall notify all affected Federal Land Managers within 30 days of receipt of an advance notification of any permit application for a proposed major stationary source or modification, the emissions from which may affect a Class I Area. The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application. At least 30 days prior to the publication of the notice for public comment on the application, the Director shall provide the Federal Land Manager with a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.

(c) Visibility analysis. The Director shall consider any analysis performed by the Federal Land Manager concerning visibility impairment if the analysis is received within 30 days of being provided the permit application information and analysis required by Paragraph 335-3-14-.04(15)(b). Where the Director finds that such an analysis does not demonstrate to the satisfaction of the Director that an adverse impact on visibility will result in the Federal Class I area, the Director must, in the notice of public comment on the permit application, either explain his decision or give notice as to where the explanation can be obtained.

(d) Denial - Impact on Air Quality Related Values. The Federal Land Manager of any such lands may demonstrate to the Director that the emissions from a proposed source or

modification would have an adverse impact on the air quality related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Director concurs with such demonstration, then he shall not issue the permit.

(e) Class I Variances. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies, the Director may issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over baseline concentration for such pollutants:

	Maximum Allowable Increase (micrograms per cubic meter)
Total suspended particulates:	
Annual geometric mean	19
24-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

provided, that the applicable requirements of this Rule are otherwise met.

(f) Sulfur Dioxide Variance by Governor with Federal Land Manager's Concurrence. The owner or operator of a proposed source or modification which cannot be approved under Paragraph 335-3-14-.04(15)(c) may demonstrate to the Governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four (24) hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this

clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Director shall issue a permit to such source or modificiation pursuant to the requirements of Paragraph 335-3-14-.04(15)(f): provided, that the applicable requirements of this Rule are otherwise met.

(g) Variance by the Governor with the President's Concurrence. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the Director shall issue a permit pursuant to the requirements of Paragraph 335-3-14-.04(15)(f): provided, that the applicable requirements of this Rule are otherwise met.

(h) Emission Limitations for Presidential or Gubernatorial Variance. In the case of a permit issued pursuant to Paragraphs 335-3-14-.04(15)(d) or (e), the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase
(micrograms per cubic meter)

Period of exposure	Terrain areas	
	Low	High
24-hour maximum	36	62
3-hour maximum	130	221

(16) Public Participation.

(a) After receipt of an application for an Air Permit or any addition to such application, the Director shall advise the applicant of any deficiency in the application or in the information submitted. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this Rule, the date on which the Director received all required information.

(b) Within one (1) year after receipt of a complete application, the Director shall make a final determination of the application. This involves performing the following actions in a timely manner:

1. Make a preliminary determination whether construction should be approved, approved with conditions or disapproved.

2. Make available in at least one location in each region in which the proposed source or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

3. Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for written public comment, as well as comment at a public hearing.

4. Send a copy of the notice of public comment to the applicant, to EPA and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other State or local air pollution control agencies, the chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification.

5. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

6. Consider all written comments submitted within a

time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Director shall consider the applicant's response in making a final decision. The Director shall make all comments available for public inspection in the same locations where the Director made available preconstruction information relating to the proposed source or modification.

7. Make a final determination whether construction should be approved, approved with conditions or disapproved pursuant to this Rule.

8. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Director made available preconstruction information and public comments relating to the source or modification.

(17) Source Obligation.

(a) An Air Permit authorizing construction shall become invalid if construction is not commenced within twenty-four (24) months after receipt of such approval, if construction is discontinued for a period of twenty-four (24) months or more, or if construction is not completed within a reasonable time. The Director may extend the twenty-four (24) month period upon satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within twenty-four (24) months of the projected and approved commencement date.

(b) An Air Permit authorizing construction shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, State or Federal law.

(c) At such time that a particular source or modification becomes a major stationary source or major modification solely by virture of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Sections 335-3-14-.04(9) through 335-3-14-.04(17) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(18) Innovative Control Technology.

(a) An owner or operator of a proposed major stationary source or major modification may request the Director in writing no later than the close of the comment period under Section 335-3-14-.04(16) to approve a system of innovative control technology.

(b) The Director shall determine that the source or modification may employ a system of innovative control technology, if:

1. The proposed control system would not cause or contribute to an unreasonsable risk to public health, welfare or safety in its operation or function;

2. The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Paragraph by a date 335-3-14-.04(9)(b) specified by the Director. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance;

3. The source or modification would meet the requirements of Sections 335-3-14-.04(9) and (10) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Director;

4. The source or modification would not before the date specified by the Director:

(i) Cause or contribute to a violation of an applicable National Ambient Air Quality Standard; or

(ii) Impact any Class I area; or

(iii) Impact any area where an applicable increment is known to be violated; and

5. The consent of the Governor of any other affected state is secured;

6. All other applicable requirements including those for public participation have been met.

(c) The Director shall withdraw any approval to employ a system of innovative control technology made under this Section, if:

1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare or safety; or

3. The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare or safety.

(d) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with Paragraph 335-3-14-.04(18)(c), the Director may allow the source or modification up to an additional three (3) years to meet the requirement for the application of BACT through use of a demonstrated system of control.

(19) Permit Rescission.

(a) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under Rule 335-3-14-.04 as in effect on July 30, 1987 or any earlier version of this Rule, may request that the Director rescind the permit or a particular portion of the permit.

(b) The Director shall grant an application for rescission if the application shows that this Rule would not apply to the source or modification.

(c) If the Director rescinds a permit under this Section, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region within sixty (60) days of the rescission shall be considered adequate notice.

Author: Marilyn G. Elliott
Statutory Authority: Code of Alabama 1975, ÏÏ 22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: December 10, 1981.
Amended: February 13, 1985; November 13, 1985; November 1, 1990, December 28, 1993.

335-3-14-.05 Air Permits authorizing construction in or near Nonattainment Areas.

(1) Effective Date. The requirements of this Rule shall be effective upon approval by EPA.

(2) Definitions. For purposes of this Rule, the following terms will have the meanings ascribed in this Paragraph:

(a). "Source" shall mean any building structure, installation, article, machine, equipment, device or other contrivance which emits or may emit any air contaminant. A facility is composed of one or more pollutant-emitting sources.

(b). "Potential to Emit" shall mean the maximum capacity to emit a pollutant under physical and operational design conditions. Any physical or operational limitation on the capacity to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as a part of the design only if the limitation or the effect it would have on emissions is enforceable. Secondary emissions are not calculated in determining the potential to emit.

(c).1 "Major Facility" shall mean:

(i) Any source or facility for which the potential emission rate is equal to or greater than 100 tons per year of any pollutant subject to regulation under the Federal Clean Air Act (CAA); or

(ii) Any physical change that would occur at a facility not qualifying under Subdivision 335-3-14-.05(2)(c)(1)(i) as a major facility, if the change would constitute a major facility by itself.

2 A major facility that is major for volatile organic compounds shall be major for ozone.

(d) "Major Modification" shall mean any physical change in, change in the method of operation of, or addition to a major facility which would result in a significant net emissions increase at the facility of any pollutant subject to regulation under the CAA.

1. A physical change or a change in method of operation shall not include:

(i) Routine maintenance, repair, and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order in effect under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA;

(iv) Change in ownership of a source;

(v) Use of refuse derived fuel generated from municipal solid waste.

2. A change in the method of operation, unless limited by previous permit conditions, shall not include:

(i) An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) An increase in the hours of operation;

(iii) Use of an alternative fuel or raw material, if on December 21, 1976, the source was capable of accommodating such fuel or material.

(e) "Allowable Emissions" shall mean the emission rate calculated using the maximum rated capacity of the source (unless the source is subject to enforceable permit conditions which limit the operating rate, or hours of operation, or both) and the most stringent of the following:

1. Applicable New Source Performance Standards set forth in 40 CFR 60,

2. Applicable National Emission Standards for Hazardous Air Pollutants set forth in 40 CFR 61,

3. Applicable State Implementation Plan emission limitation, or

4. The emission rate specified as an enforceable permit condition.

(f) "Lowest Achievable Emission Rate" (LAER) shall mean, for any source, that rate of emissions based on whichever of the following is more stringent:

1. The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

2. The most stringent emission limitation which is achieved in practice or can reasonably be expected to occur in practice by such class or category of sources taking into consideration the pollutant which must be controlled,

3. This term, applied to a modification, means the

lowest achievable emission rate for the new or modified source within the facility. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(g) Reserved.

(h) Reserved.

(i) "Significant Impact" shall mean:

1. For particulate matter and sulfur dioxide, the following significant levels would be exceeded in the portion of the designated nonattainment area where the ambient air quality standards are actually violated.

	Annual	24-Hour	3-Hour
Particulate Matter	1 ug/m^3	5 ug/m^3	
Sulfur Dioxide	1 ug/m^3	5 ug/m^3	25 ug/m^3

2. For volatile organic compounds, any source locating outside the boundaries of a nonattainment area shall not be considered to have a significant impact on the nonattainment area.

(j) "Net Emissions Increase" shall mean

1. The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in the method of operation, and

(ii) Any other increases and decreases in actual emissions that are contemporaneous with the particular change and are otherwise creditable.

2. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(i) The date five (5) years before construction on the particular change commences, and

(ii) The date that the increase from the particular change occurs.

3. An increase or decrease in actual emissions is creditable only if:

(i) It has not been relied on in issuing a permit to the facility which is in effect when the increase in actual emissions from the particular change occurs, and

(ii) It occurs after the effective date of this Section.

4. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

5. A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins;

(iii) It has not been relied on in issuing any permit under the State Implementation Plan or in demonstrating attainment or reasonable further progress; and

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

6. An increase that results from a physical change occurs when the source on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(k) "Significant" shall mean, in reference to a net emissions increase or the potential of a source or facility to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate (tons per year)

Carbon monoxide: 100
Nitrogen oxides: 40
Sulfur dioxide: 40
Ozone (volatile organic compounds): 40
Lead: 0.6

(l)1. "Actual Emissions" shall mean the actual rate of emissions of a pollutant from a source as determined by Subdivisions (l)2. through 4.

2. In general, actual emissions as of any given date shall equal the average rate in tons per year at which the source actually emitted the pollutant during a two-year period which precedes the given date and which is representative of normal source operation. The use of a different time shall be allowed upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the sources's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.

3. The reviewing authority may presume that source-specific allowable emissions for the source are equivalent to the actual emissions of the source.

4. For any source which has not begun normal operations on the given date, actual emissions shall equal the potential to emit of the source on that date.

(m) "Construction" shall mean any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of a source) which would result in a change in actual emissions.

(n) "Commence", as applied to construction of a major facility or major modification, shall mean that the owner or operator has all necessary preconstruction approvals or permits and has either:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(o) "Necessary Preconstruction Approvals or Permits" shall mean those permits or approvals required under the State Implementation Plan.

(p) "Begin Actual Construction" shall mean, in general, initiation of physical on-site construction activities including, but not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(q) "Adverse Impact on Visibility" shall mean visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

(r) "Visibility Impairment" shall mean any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

(s) "Natural Conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

(t) "Offset ratio" shall mean the ratio of total actual emissions reductions to total allowable emissions increases of such pollutant from the new source.

(3) Applicability. Except as provided in Paragraphs 335-3-14-.05(4), (5), and (6), no Air Permit shall be issued to a person proposing to construct or make a major modification to a major facility (for the pollutant for which the area has been designated nonattainment) in a nonattainment area or which will have a significant impact if located outside the nonattainment area unless:

(a) The person demonstrates that the new source or the major modification will meet an emission limitation, said emission limitation to be the lowest achievable emission rate (LAER) for that source or facility;

(b) The person certifies that all existing major sources owned or operated by that person (or any entity controlling, controlled by, or under common control with that person) within Alabama are in compliance with applicable emission limits or are on an acceptable schedule;

(c) The person demonstrates that emission reductions from existing source(s) in the area of the proposed source/major modification (whether or not under the same ownership) meet the offset requirements of Paragraph 335-3-14-.05(6);

(d) Reserved.

(4) Exceptions.

(a) Reserved.

(b) Reserved.

(c)1. A person proposing to construct or make a major modification to a major facility subject to the provisions of this Section, located in a nonurban nonattainment area (less than 200,000 population), shall be required to install LAER but shall not be required to obtain emission offsets as specified herein.

2. The provisions of Subdivision 335-3-14-.05(4)(c)1. are applicable to volatile organic compound sources only.

(d) Construction of or modification to a major source locating in a nonattainment area which is projected to be attainment as of the startup date of such source shall be exempt from the requirements of this Section.

(e) Reserved.

(5) Temporary Emissions. The requirements of Subparagraph 335-3-14-.05(3)(c) shall not apply to emissions of a particular pollutant if the person applying for an Air Permit under this Section can demonstrate that the emissions of the pollutant are of a temporary nature including but not limited to those from a pilot plant, a portable facility, construction, or exploration; and notice is given to the Director at least thirty (30) days prior to relocation of such source identifying the proposed new location and the probable duration of operation at such location.

(6) When a facility or modification subject to this Section may impair the visibility of a Federal Class I area, the following procedures shall be followed:

(a) The facility shall provide an analysis of the impairment to visibility that would occur as a result of the facility or modification and general commercial, industrial and other growth associated with the facility or modification.

(b) The Director shall notify all affected Federal Land Managers within 30 days of receipt of any advance notification of a permit application for a proposed major stationary facility or modification, the emissions from which may affect a Class I Area. The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application. At least 30 days prior to the publication of the notice for public comment on the application, the Director shall

provide the Federal Land Manager with a copy of all information relevant to the permit application including an analysis provided by the facility of the potential impact of the proposed facility on visibility.

(c) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of being provided the permit application information and analysis required in Subparagraph 335-3-14-.05(6)(b) If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Federal Class I area, the Director shall provide in the notice for public comment on the application, an explanation of his decision or notice as to where the explanation can be obtained.

(d) The Director may require monitoring of visibility in any Class I area near the proposed new facility or modification.

(e) The requirements of this Paragraph shall not apply to a particular major stationary facility or major modification, if the facility or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the Governor of Alabama requests that it be exempt from those requirements.

(7) Offset Standards.

(a) Increased emissions by a source or facility subject to this Section must be offset by a reduction in the emissions of that pollutant by the source itself or by other sources in the area to the extent necessary to prevent interference with reasonable further progress toward attainment.

1. The offset ratio for ozone (marginal) nonattainment areas shall be at least 1.1 to 1.

2. The offset ratio for all other nonattainment areas shall be at least 1.0 to 1.

(b) When a major source or modification, which is otherwise subject to the requirements of this Paragraph, will result in a specific and well defined increase in secondary emissions, which can be accurately quantified and which will impact the same nonattainment area, these emissions shall be offset in accordance with the requirements of this Paragraph.

(c) The baseline for determining credit for emission

offsets of any source shall be the allowable emissions of said source or the existing emissions of said source, not including any malfunctions, whichever is less.

(d) Reduced allowable emissions from an existing source due to a change to a cleaner fuel may be used to offset emissions from the new source or alteration so long as the change will occur at some future date. Emission reductions from a change of fuel shall not be used to offset emissions if there are not adequate supplies of the new fuel available.

(e) Offsets shall be made on a tons-per-year basis when all facilities involved in the emission offset calculations are operating at their maximum expected production rate. However, a source may be credited with emission reductions achieved by the shutdown of a source or the curtailment of production of a source below that which existed at the time the application was submitted, provided that the work force to be affected has been notified of the proposed shutdown or curtailment.

(f) All emission reductions used for offsets must be legally enforceable in a manner approved by the Director.

(8) Reserved.

(9) Banking of Emission Offsets. Offsets approved after January 16, 1979, which exceed the requirement of reasonable further progress may be "banked" for future use; likewise, reductions in emissions from existing sources which exceed the requirement of reasonable further progress may be "banked" for future use. The banking is subject to the following requirements:

(a)1. Application shall be made in writing to the Director, describing the emission offsets to be banked, such description to include location, source, and type of emissions.

2. Emission offsets cannot be banked beyond the allowable emissions of said source or the existing emission of said source, not including any malfunctions, whichever is less.

(b) Upon approval by the Director of said application, the banked emissions shall be credited to the facility submitting such application.

(c)1. No emission offsets banked in accordance with the provisions of this Paragraph shall be used unless written notice is provided to the Director thirty (30) days prior to submission of the necessary permit applications, to

provide opportunity for review of the proposed use of the banked emission offsets.

2. In the event that a determination is made that the banked emission offsets may not be used for the proposed construction, written notice shall be afforded the applicant, as provided in Section 335-3-14-.02(3), herein.

(d) In the event that a determination under Subdivision 335-3-14-.05(9)(c)2. is made by the Director, construction may proceed if, and only if, emission offsets are obtained sufficient to satisfy the requirements of Paragraph 335-3-14-.05(7).

(e) Nothing contained in this Paragraph shall prohibit the transfer, assignment, sale, or otherwise complete dispositon of said banked emission offsets, provided that written notice is provided to the Director, thirty (30) days prior to such disposition, describing in detail the recipient of the banked emissions.

(10) Reserved.

(11) At such time that a particular source or facility or modification becomes a major facility or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source, facility or modification otherwise to emit a pollutant, then the requirements of this Section shall apply as though construction had not yet commenced.

(12) The requirements of this Rule shall not apply to a particular major stationary facility or major modification if:

(a) The major facility or major modification was not subject to this Section as in effect on November 26, 1979, or to the Federal Emission Offset Interpretative Ruling as in effect January 18, 1979, if the owner or operator:

1. Obtained all necessary preconstruction approval before August 7, 1980;

2. Commenced construction within 18 months from August 7, 1980; and

3. Did not discontinue construction for a period of (18) eighteen months or more and completed construction within a reasonable time or

(b) The facility or modification would be a major stationary facility or major modification only if fugitive

emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary facility or modification and the facility does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process)
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Any other stationary category which, as of August 7, 1980 is being regulated under Sections 111 or 112 of the Clean Air Act;

(13) Public Participation.

(a) After receipt of an application to construct or any addition to such application, the Director shall advise the applicant of any deficiency in the application or in the information submitted. In the event of such a deficiency, the date of receipt of the application shall_be, for the purpose of this Rule the date on which the Director received all required information.

(b) Within one (1) year after receipt of a complete application, the Director shall make a final determination of the application. This involves performing the following

actions in a timely manner:

1. Make a preliminary determination whether construction should be approved, approved with conditions or disapproved.

2. Make available in at least one location in each region in which the proposed facility or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

3. Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed facility or modification would be constructed, of the application, the preliminary determination, and the opportunity for written public comment, as well as comment at a public hearing.

4. Send a copy of the notice of public comment to the applicant, to EPA and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies, the chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the facility or modification.

5. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the facility or modification, the control technology required, and other appropriate considerations.

6. Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Director shall consider the applicant's response in making a final decision. The Director shall make all comments available for public inspection in the same locations where the Director made available preconstruction information relating to the proposed facility or modification.

7. Make a final determination whether construction should be approved, approved with conditions or disapproved pursuant to this Section.

8. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Director made available preconstruction information and public comments relating to the facility or modification.

Author: James W. Cooper and John E. Daniel
Statutory Authority: Code of Alabama 1975, ÏÏ 22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.
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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Air Division

Chapter 335-3-15
Synthetic Minor Operating Permits

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335-3-15-.01 Definitions. For the purposes of this Chapter only, the following words and phrases, unless a different meaning is plainly required by the content, shall have the following meanings.

(a) "Act" shall mean the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

(b) "Air Permit" shall mean any permit issued pursuant to the regulations in ADEM Admin. Code R. 335-3-14.

(c) "Department" shall mean the Alabama Department of Environmental Management.

(d) "Operating Permit" shall mean any permit issued pursuant to the regulations in ADEM Admin. Code R. 335-3-16.

(e) "Potential Major Source" shall mean any major source as defined in ADEM Admin. Code R. 335-3-16-.01 whose actual emissions are less than the major source thresholds.

(f) "Stationary Source" shall mean any building, structure, facility, or installation that emits or may emit any regulated air pollutant as defined in ADEM Admin. Code R. 335-3-16-.01 or any pollutant listed in Appendix G of this Administrative Code.

(g) "Synthetic Minor Operating Permit" shall mean a permit which restricts a source's potential to emit so that it is a Synthetic Minor Source.

(h) "Synthetic Minor Source" shall mean a source whose potential to emit is restricted to less than a major source threshold as defined in ADEM Admin. Code R. 335-3-16-.01.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§ 22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: December 28, 1993.

335-3-15-.02 General Provisions.

(1) Any Potential Major Source operating without an Air Permit, an Operating Permit or a Synthetic Minor Operating Permit may continue to operate (or may restart) only if its owner or operator obtains a Synthetic Minor Operating Permit or an Operating Permit prior to a date to be set by the Director (or prior to restarting).

(2) Display of Synthetic Minor Operating Permit. A person who has been granted a Synthetic Minor Operating Permit for any article, machine, equipment, or other contrivance shall keep such permit under file or on display at all times at the site where the article, machine, equipment, or other contrivance is located and will make such a permit readily available for inspection by any and all persons who may request to see it.

(3) The Director shall have the authority to decide cases where an article, machine, equipment, or other contrivance is not clearly subject to nor exempt from the application of this Rule. In addition, the Director may rule that a particular article, machine, equipment, or other contrivance is subject to the application of this Rule even though it is exempt from the system according to Paragraph 335-3-15-.03(1) and Paragraph 335-3-15-.02(7) of this Rule. The operator or builder of such an article, machine, equipment, or other contrivance may appeal the Director's classification to the Commission, which shall overrule the Director only if it is shown that he acted arbitrarily and contrary to the purposes of the Act.

(4) The Department may issue a Synthetic Minor Operating Permit subject to conditions which will bring the operation of any article, machine, equipment, or other contrivance within the standards of Subparagraph 335-3-15-.02(8)(a) of this Rule in which case the conditions shall be specified in writing. Commencing construction or operation under such a Synthetic Minor Operating Permit shall be deemed acceptance of all the conditions specified. The Department shall issue a Synthetic Minor Operating Permit with revised conditions upon receipt of a new application, if the applicant demonstrates that the article, machine, equipment, or other contrivance can operate within the standards of Subparagraph 335-3-15-.02(8)(a) of this Rule under the revised conditions.

(5) Provision of Sampling and Testing Facilities. A

person operating or using any article, machine, equipment or other contrivance for which these rules and regulations require a permit shall provide and maintain such sampling and testing facilities as specified in the Synthetic Minor Operating Permit.

(6) Transfer. A Synthetic Minor Operating Permit shall not be transferable whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another.

(7) Delegation of Synthetic Minor Operating Permit requirements to Local Air Pollution Control Programs.

(a) Local air pollution control programs may receive delegation of authority from the Director to administer the requirements of Chapter 335-3-15 within their jurisdiction provided the local air pollution control program:

1. Adopts regulations which will insure that applicants are required to satisfy the same requirements contained in the Department's regulations; and

2. Adopts regulations which will require that the Department be provided with an opportunity to review the permit application, the analysis of the permit, and proposed permit conditions at least 10 days prior to issuance of a Synthetic Minor Operating Permit.

(b) If the Director of the Department determines that local program procedures for implementing all the portions of Chapter 335-3-15 are inadequate, or are not being effectively carried out, any authority delegated to the local programs to administer Chapter 335-3-15 may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the local air pollution control program.

(c) The Department reserves the authority contained in Subparagraph 335-3-15-.02(8)(h), to revoke any Synthetic Minor Operating Permit issued pursuant to this Chapter.

(d) Any Synthetic Minor Operating Permit issued by a local air pollution control program, including all conditions contained therein, is enforceable by the Department.

(8) General Standards for Granting Synthetic Minor Operating Permits.

(a) The Department shall deny a Synthetic Minor Operating Permit if the applicant does not show that every article, machine, equipment, or other contrivance, the use of which may cause the issuance of air contaminants, is so designed, controlled, or equipped with such air pollution

control equipment, that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of this Administrative Code. Issuance of a Synthetic Minor Operating Permit shall not relieve the permittee from complying with any other applicable requirements not contained in this Administrative Code.

(b) The Department shall deny a Synthetic Minor Operating Permit if the applicant does not present, in writing, a plan whereby the emission of air contaminants by every article, machine, equipment, or other contrivance described in the permit application, will be reduced during periods of an Air Pollution Alert, Air Pollution Warning, and Air Pollution Emergency in accordance with the provisions of Chapter 335-3-2, where such a plan is required.

(c) Before a Synthetic Minor Operating Permit is granted, the Director may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the article, machine, equipment, or other contrivance described in the Synthetic Minor Operating Permit. In the event of such a requirement, the Department shall notify the applicant in writing of the required size, number, and location of the sampling platform; the access to the sampling platform; and the utilities for operating and sampling and testing equipment. The Department may also require the applicant to install, use, and maintain such monitoring equipment or methods; sample such emissions in accordance with such methods, at such locations, intervals, and procedures as may be specified; and provide such information as the Department may require.

(d) Before acting on an application for a Synthetic Minor Operating Permit, the Department may require the applicant to furnish further information or further plans or specifications.

(e) If the Department finds that the article, machine, or other contrivance has been constructed not in accordance with the Synthetic Minor Operating Permit application, and if the changes noted are of a substantial nature in that the amount of air contaminants emitted by the article, machine, equipment, or other contrivance may be increased, or in that the effect is unknown, then it shall revoke the Synthetic Minor Operating Permit. The Department shall not accept any further application for a Synthetic Minor Operating Permit until the article, machine, equipment, or other contrivance has been reconstructed in accordance with said Synthetic Minor Operating Permit or until the applicant has proven to the satisfaction of the Department that the change will not cause

an increase in the emission of air contaminants.

(f) The Department shall deny a Synthetic Minor Operating Permit where it determines that the construction and operation of such Stationary Source will interfere with attaining or maintaining any primary or secondary standard established by Subparagraph 335-3-1-.04(1). A new Stationary Source or modification will be considered to interfere with attaining or maintaining a standard when such Stationary Source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the National Primary and Secondary Ambient Air Quality Standards, as defined in ADEM Admin. Code R. 335-3-1-.03:

POLLUTANT AVERAGING TIME

	Annual	24 hours	8 hours	3 hours	1 hour
SO_2	1.0 $\mu g/m^3$	5 $\mu g/m^3$		25 $\mu g/m^3$	
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$			
NO_2	1.0 $\mu g/m^3$				
CO			0.5 mg/m^3		2 mg/m^3

(g) A determination may be made by the Director to deny a permit application if the applicant operates other permitted facilities or Stationary Sources within the state which are in substantial noncompliance as determined by the Director, until such noncompliance is corrected or if the Director determines that a permit that results in compliance with applicable air pollution control standards could not be issued, or if issued, could not be complied with.

(h) Revocation of Synthetic Minor Operating Permits. Any Synthetic Minor Operating Permit granted by the Department may be revoked for any of the following causes:

1. failure to comply with any conditions of the permit;

2. failure to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods; and sample such emissions in accordance with such methods at such locations, intervals and procedures as the Department may prescribe in accordance with Subparagraph 335-3-1-.04(2);

3. failure to comply with any provisions of any

Departmental administrative order issued concerning the permitted Stationary Source or facility.

4. failure to allow employees of the Department upon proper identification to:

(i) enter any premises, at reasonable times, where any article, machine, equipment, or other contrivance described in Subparagraph 335-3-15-.03(1) is located or in which any records are required to be kept under provisions of the permit and/or this Administrative Code;

(ii) have access to and copy any records required to be kept under provisions of the permit and/or this Administrative Code;

(iii) inspect any monitoring equipment or practices being maintained pursuant to the permit and/or rules and regulations; and

(iv) have access to and sample any discharge of air contaminants resulting directly or indirectly from the operation of any article, machine, equipment, or other contrivance described in Subparagraph 335-3-15-.03(1).

5. failure to comply with the Department's Administrative Codes.

6. for any other cause, after a hearing which establishes, in the judgment of the Department, that continuance of the permit is not consistent with the purpose of this Act or regulations adopted pursuant thereto.

(9) Stack Heights.

(a) Definitions. For purposes of this Subparagraph, the following terms will have the meanings ascribed in this Paragraph.

1. "Emission limitation" and "emission standard" mean a requirement, established by ADEM or the EPA Administrator, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

2. "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct pollutant; but not including flares.

3. "A stack in existence" means that the owner or

operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

4. "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) Using that portion of a stack which exceeds good engineering practice stack height;

(ii) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that

(iii) Increasing final exhaust gas plume rise by manipulating source-process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(iv) The preceding sentence does not include:

(I) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(II) The merging of exhaust gas streams where:

A. The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

B. After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

C. Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior

to the merging, the Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

(III) Smoke management in agricultural or silvicultural prescribed burning programs;

(IV) Episodic restrictions on residential wood burning and open burning; or

(V) Techniques under Subparagraph 335-3-15-.02(9)(a)4.(iii) which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

5. "Good engineering practice" (GEP) stack height means the greater of:

(i) 65 meters, measured from the ground-level elevation at the base of the stack:

(ii)(I) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR 51 and 52, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

$$Hg = 2.5H.$$

(II)For all other stacks,

$$H_g = H + 1.5\ L,$$

where

H_g = good engineering practice stack height measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width of nearby structure(s),

provided that the Director may require the use of a field study or fluid model to verify GEP stack height for the source; or

(iii) The height demonstrated by a fluid model or a field study approved by the Director, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or nearby terrain features.

6. "Nearby" as used in Subparagraph 335-3-15-.02(9)(a)5. of this Paragraph is defined for a specific structure or terrain feature and

(i) for purposes of applying the formulas provided in Subparagraph 335-3-15-.02(9)(a)5.(ii) means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and

(ii) for conducting demonstrations under Subparagraph 335-3-15-.02(9)(a)5.(iii) means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (h_t) of the feature, not to exceed 2 miles if such feature achieves a height (h_t) 0.8 km from the stack that is at least 40 percent of the GEP stack height determined by the formula provided in Subparagraph 335-3-15-.02(9)(a)5.(ii)(II) or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

7. "Excessive concentration" is defined for the purpose of determining GEP stack height under Subparagraph 335-3-15-.02(9)(a)(5)(iii) and means:

(i) for sources seeking credit for stack height exceeding that established under Subparagraph 335-3-15-.02(9)(a)5.(ii), a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than a NAAQS. For sources subject to the PSD program (Rule 335-3-14-.04), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration

experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emissions rate to be used in making demonstrations under this Rule shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the source owner or operator;

(ii) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under Subparagraph 335-3-15-.02(9)(a)5.(ii), either:

(I) a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects as provided in Subparagraph 335-3-15-.02(9)(a)7.(i), except that the emission rate specified elsewhere in these regulations (or, in the absence of such a limit, the actual emission rate) shall be used, or

(II) the actual presence of a local nuisance caused by the existing stack, as determined by the Director; and

(iii) for sources seeking credit after January 12, 1979, for a stack height determined under Subparagraph 335-3-15-.02(9)(a)5.(ii) where the Director requires that use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in Subparagraph 335-3-15-.02(9)(a)5.(ii), a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(b) Before acting on any Synthetic Minor Operating Permit, the Director shall require that the degree of emission limitation required of any source for control of any air pollutants shall not be affected by so much of any source's stack height that exceeds GEP or by any other dispersion technique, except as provided in Paragraph 335-3-15-.02(9)(c).

(c) The provisions of Paragraph 335-3-15-.02(9)(b) shall not apply to stack heights in existence, or dispersion techniques implemented, prior to December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section

111(a)(3) of the Clean Air Act, which were constructed, or reconstructed or for which major modifications, as defined pursuant to Subparagraphs 335-3-14-.05(2)(d) and 335-3-14-.04(2)(b)1., were carried out after December 31, 1970.

(d) If any existing source, after appropriate application of the preceding limitations and provisions, is found to exceed or potentially exceed a NAAQS or PSD increment, when operating within previously established emission limitations, the emissions limitations applicable to that source shall be modified so as to eliminate and prevent the exceedance.

(e) If any new source or source modification, after appropriate application of the preceding limitations and provisions, is predicted to exceed a NAAQS or PSD increment when evaluated under emission limitations consistent with other applicable rules and regulations, the emission limitations considered shall be deemed inadequate and different emission limits, based on air quality considerations, shall be made applicable.

(f) If any source provides a field study or fluid modeling demonstration proposing a GEP stack height greater than that allowed by Subparagraphs 335-3-15-.02(9)(a)5.(i) and 335-3-15-.02(9)(a)5.(ii), then the public will be notified of the availability of the study and provided the opportunity for a public hearing before any new or revised emission limitation or permit is approved.

(g) The actual stack height used or proposed by a source shall not be restricted in any manner by requirements of this Section.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§ 22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: December 28, 1993.

335-3-15-.03 Applicability. The provisions of this Chapter shall apply only to Potential Major Sources, except for those Stationary Sources which are applying for, will apply for, or have obtained Operating Permits.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§ 22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: December 28, 1993

335-3-15-.04 Synthetic Minor Operating Permit Requirements.

(1) General Provisions.

(a) The Synthetic Minor Operating Permit shall include specific conditions that restrict the facility's potential to emit and are federally enforceable.

(b) Any Stationary Source requesting a Synthetic Minor Operating Permit must undergo the public participation procedures prescribed in ADEM Admin. Code R. 335-3-15- .05.

(c) A Potential Major Source that does not obtain a Synthetic Minor Operating Permit shall apply for an Operating Permit.

(d) The Department shall act, within a reasonable time, on an application for a Synthetic Minor Operating Permit and shall notify the applicant in writing of its approval, conditional approval, or denial.

(e) In the event of a denial of a Synthetic Minor Operating Permit, the Department shall notify the applicant in writing of the reason therefor. Service of this notification may be made in person or by mail, and such service may be proved by the written acknowledgment of the persons served or affidavit of the person making the service. The Department shall not accept a further application unless the applicant has complied with the objections specified by the Department as its reasons for denial of Synthetic Minor Operating Permit.

(f) The facility shall obtain a Synthetic Minor Operating Permit prior to beginning operation of the new or modified Stationary Source and shall notify the Department at least ten (10) days prior to beginning such operation.

(g) The holder of a Synthetic Minor Operating Permit shall comply with all conditions contained in such permit, as well as all applicable provisions of this Administrative Code. Such conditions shall be permanent, quantifiable and otherwise enforceable as a practical matter. Synthetic Minor Operating Permits which do not conform to the provision in this Chapter and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.

(2) Existing Potential Major Sources.

(a) Any facility that would request a Synthetic Minor Operating Permit shall apply to the Department within one year after approval by EPA of the Operating Permit regulations in Chapter 16.

(b) Any facility possessing an Operating Permit or whose potential emissions require it to obtain an Operating Permit may, at any time, accept federally enforceable permit restrictions which would allow it to obtain a Synthetic Minor Operating Permit.

(3) New Potential Major Sources.

(a) Any new Potential Major Source which commences construction after November 15, 1995, may apply to the Department for a Synthetic Minor Operating Permit. This application shall be accurately completed and submitted to the Department prior to such construction.

(b) A Synthetic Minor Operating Permit for a new Potential Major Source shall expire and the application shall be canceled two years from the date of issuance of the Synthetic Minor Operating Permit if construction has not begun.

(4) Modifications to Synthetic Minor Sources

(a) Any Stationary Source subject to the regulations in this Chapter that is modified so that it becomes a major source as defined in ADEM Admin. Code R. 335-3-16-.01(15) shall apply for an Operating Permit within twelve (12) months of beginning operation.

(b) Any modification which would require a change to existing permit conditions that restrict the facility's potential to emit or require new conditions that restrict the facility's potential to emit, as required in Subparagraph 335-3-15-.04(1)(a) of this Rule, must undergo the public participation procedures prescribed in ADEM Admin. Code R. 335-3-15- .05.

(5) Exceptions to Violations of Emission Limits.

(a) The Director may, in the Synthetic Minor Operating Permit, exempt on a case by case basis any exceedances of emission limits or permit conditions which cannot reasonably be avoided, such as during periods of start-up and shut-down or load change.

(b) The Director may exempt on a case by case basis exceedances of emission limits and permit conditions which cannot reasonably be avoided as a result of an "emergency" situation.

1. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility, including acts of God. These are situations that require immediate corrective action (s) to restore normal operation, and that cause the facility to exceed a technology based emission limitation set by the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include exceedances of the permit emission limitations caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

2. Exceedances of emissions limitations during emergencies at a facility may be exempted as being violations provided that:

(i) the permittee identifies the cause (s) of the emergency;

(ii) the permitted facility was being properly operated until such a time as the emergency occurred;

(iii) during the period of which the emergency occurred, the permittee took all reasonable steps to minimize levels of emissions that exceeded the standards, or other requirements of the permit; and

(iv) the permittee submitted notice of the emergency to the Department within two (2) working days of the time when the emissions limitations were exceeded as a result of the emergency. Such notice shall include those deviations attributable to upset conditions as defined in the permit, the probable cause of said deviations, and any corrective actions or preventive measures that were taken. Within 5 working days of the emergency, a written documentation of what was reported in the notice of the emergency shall be submitted to the Department.

3. The Director shall be the sole determiner of whether an emergency has occurred.

4. This provision is in addition to any emergency or upset provision contained in any applicable requirement of the permit or the regulations.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§ 22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: December 28, 1993.

335-3-15-.05 Public Participation.

(1)(a) The provisions of this Rule apply only to potential major sources as specified in ADEM Admin. Code R. 335-3-15-.04(1)(b) and -.04(4)(b).

Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice and also to persons on a mailing list developed by the Department for persons desiring notice of permit action, including persons who have requested in writing to be on such a list. A copy of the notice shall also be provided to EPA.;

(b) The notice shall identify the affected facility; the name and address of the permittee; the address of the Department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, except for information entitled to be kept confidential, and all other materials available to the Department that are relevant to the permit decision; a brief description of the comment procedures required by this Rule; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

(c) The Department shall provide at least 15 days for public comment; and

(d) The Department shall keep a record of the commenters and also of the issues raised during the public participation process.

(2) Any new Stationary Source which is required to undergo a public comment period shall not initiate construction until all public participation procedures have been completed.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§ 22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8.
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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Air Division

Chapter 335-3-16
Major Source Operating Permits

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335-3-16-.01 Definitions. For the purposes of this Chapter only, the following words and phrases, unless a different meaning is plainly required by the content, shall have the following meanings.

(a) "Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

(b) "Affected source" means a source that includes one or more affected units subject to emission reduction requirements or limitations in title IV of the Act.

(c) "Affected States" are all States:

1. Whose air quality may be affected and that are contiguous to the State in which permit modification or permit renewal is being proposed; or

2. That are within 50 miles of the permitted source.

(d) "Affected Unit" means any unit subject to emission reduction requirements or limitations under title IV of the Act.

(e) "Applicable Requirement" means all of the following as they apply to emissions units (including requirements that have been promulgated or approved by EPA through rule making

at the time of issuance but have future effective compliance dates):

1. Any standard or other requirement provided for in Alabama's State Implementation Plan approved or promulgated by EPA through rule making in Part 51 of Title 40 in the Code of Federal Regulations that implements the relevant requirements of the Act, including any revisions to that plan promulgated in Subpart B of Part 52 of Title 40 in the Code of Federal Regulation

2. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under title I, including parts C or D, of the Act; (Air Pollution Prevention and Control, Prevention of Significant Deterioration and Plan Requirement for nonattainment areas).

3. Any standard or other requirement in ADEM Admin. Code R. 335-3-10 (NSPS); including section 111(d);

4. Any standard or other requirement ADEM Admin. Code R. 335-3-11 (NESHAPS), including any requirement concerning accident prevention under section 112(r)(7) of the Act;

5. Any standard or other requirement of the acid rain program under title IV (Acid Deposition Control) of the Act or the regulations promulgated thereunder;

6. Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

7. Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

8. Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

9. Any standard or other requirement for tank vessels under section 183(f) of the Act;

10. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone (title VI of the Act, Stratospheric Ozone Protection) unless the Administrator has determined that such requirements need not be contained in a title V permit; and

11. Any national ambient air quality standard as defined in ADEM Admin. Code R. 335-3-1-.03 or increment as defined in ADEM Admin. Code R. 335-3-14-.04 (3) or visibility requirement in ADEM Admin. Code R. 335-3-14-.04 (15), but only as it would apply to temporary sources permitted pursuant to ADEM Admin. Code R. 335-3-16-.09.

(f) "the Department" means the Alabama Department of Environmental Management.

(g) "Designated Representative" means a responsible person or official authorized by the owner or operator of an Affected Unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to an Affected Unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Affected Unit.

(h) "Draft Permit" means the version of a permit for which the Department offers public participation under ADEM Admin. Code R. 335-3-16-.15(4) or affected State review under ADEM Admin. Code R. 335-3-16-.15(2) of this part.

(i) "Emissions Allowable under the Permit" means a federally enforceable permit term or condition determined at issuance of the permit to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(j) "Emissions Unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term "unit" for purposes of title IV (Acid Deposition Control) of the Act.

(k) "The EPA" or "the Administrator" means the Administrator of the EPA or his/her designee.

(l) "Final Permit" means the version of a permit issued by the Department that has completed all review procedures required by ADEM Admin. Code R. 335-3-16-.12 and ADEM Admin. Code R. 335-3-16-.15 of this Chapter.

(m) "Fugitive Emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(n) "General Permit" means a permit that meets the requirements of ADEM Admin. Code R. 335-3-16-.08.

(o) "Insignificant Activity" generally means any air emissions or air emissions unit at a plant that has the potential to emit less than 5 tons per year of any criteria pollutant or less than 1000 pounds per year of any pollutant listed in Appendix G of ADEM Admin. Code R. 335-3. "Insignificant activity" shall also mean any change in the activity or level of operation of an air emissions unit that has the potential to increase emissions of any criteria

pollutant by less than 5 tons per year or any pollutant listed in Appendix G of ADEM Admin. Code Chap. 335-3-16 by less than 1,000 pounds per year. The Director may determine that certain types or classes of units may be considered insignificant at higher emission levels , or that, due to the nature of the pollutant(s) emitted, a unit may be considered significant at a lower emission rate. The Director shall maintain lists of air emissions or air emission units which are considered to be insignificant without a determination of emission levels by the permittee.

(p) "Interim Approval" means a conditional approval of ADEM Admin. Code 335-3-16 by the Administrator that may extend the implementation deadline of this Administrative Code.

(q) "Major Source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (1) or (2) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two digit code) as described in the Standard Industrial Classification Manual, 1987.

1. A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed in Appendix G of this Administrative Code, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

2. A major stationary source of air pollutants, as

defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any regulated air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this Chapter, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) All other stationary source categories regulated by a standard promulgated under Chapters 10 and 11 of this Administrative Code, but only with respect to those air pollutants that have been regulated for that category;

(r) "Operating Permit" or "Permit" (unless the context suggests otherwise) means any permit or group of permits that is issued, renewed, amended, or revised pursuant to this Chapter.

(s) "Permit Modification" means a revision to a permit that meets the requirements of ADEM Admin. Code R. 335-3-16-.13(3) and (4).

(t) "Permit Revision" means any permit modification or administrative permit amendment.

(u) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source's potential to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in title IV (Acid Deposition Control) of the Act or the regulations promulgated thereunder.

(v) "Proposed Permit" means the version of a permit that the Department proposes to issue and forwards to the Administrator for review in compliance with ADEM Admin. Code R. 335-3-16-.15(2).

(w) "Regulated Air Pollutant" means the following:

1. Nitrogen oxides or any volatile organic compounds;

2. Any pollutant for which a national ambient air quality standard has been promulgated;

3. Any pollutant that is subject to any standard promulgated under section 111 of the Act;

4. Any Class I or II substance subject to a standard promulgated under or established by title VI (Stratospheric Ozone Protection) of the Act; or

5. Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112(g), (j), and (r) of the Act, including the following:

(i). Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and

(ii). Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirement.

(x) "Renewal" means the process by which a permit is reissued at the end of its term.

(y) "Responsible Official" means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the Department;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public

agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

4. For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV (Acid Deposition Control) of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Chapter.

(z) "Section 502(b)(10) Changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

(aa) "Stationary Source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Appendix G of this Administrative Code.

(bb) "Trivial Activity" means any air emissions from a unit that is considered inconsequential, as determined by the Director. The Director shall maintain a list of air emission units or changes in air emissions that have been determined to be trivial activity.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8
History: Effective Date: December 28, 1993.
Amended:

335-3-16-.02 General Provisions

(1) Any Major Source operating without an Air Permit, an Operating Permit or a Synthetic Minor Operating Permit (as defined in Chapters 14, 15 and 16 of this Administrative Code) may continue to operate (or may restart) only if its owner or operator obtains an Operating Permit or a Synthetic Minor Operating Permit prior to a date to be set by the Director (or prior to restarting).

(2) Display of Operating Permit. A person who has been granted an Operating Permit for any article, machine, equipment, or other contrivance shall keep such permit under

file or on display at all times at the site where the article, machine, equipment, or other contrivance is located and will make such a permit readily available for inspection by any and all persons who may request to see it.

(3) The Director shall have the authority to decide cases where an article, machine, equipment, or other contrivance is not clearly subject to nor exempt from the application of this Rule. The operator or builder of such an article, machine, equipment, or other contrivance may appeal the Director's classification to the Commission, which shall overrule the Director only if it is shown that he acted arbitrarily and contrary to the purposes of the Act.

(4) The Director may issue an Operating Permit subject to conditions which will bring the operation of any article, machine, equipment, or other contrivance within the standards of Subparagraph 335-3-16-.02(8)(a) of this Rule in which case the conditions shall be specified in writing. Commencing construction or operation under such an Operating Permit shall be deemed acceptance of all the conditions specified. The Director may issue an Operating Permit with revised conditions upon receipt of a new application, if the applicant demonstrates that the article, machine, equipment, or other contrivance can operate within the standards of Subparagraph 335-3-16-.02(8)(a) of this Rule under the revised conditions.

(5) Provision of Sampling and Testing Facilities. A person operating or using any article, machine, equipment or other contrivance for which this Administrative Code require a permit shall provide and maintain such sampling and testing facilities as specified in the Operating Permit.

(6) Transfer. An Operating Permit shall not be transferable whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another, except as provided in ADEM Admin. Code R. 335-3-16.13(a)(5).

(7) Delegation of Operating Permit requirements to Local Air Pollution Control Programs.

(a) Local air pollution control programs may receive delegation of authority from the Director to administer the requirements of ADEM Admin. Code 335-3-16 within their jurisdiction provided the local air pollution control program:

1. adopts regulations insuring applicants are required to satisfy the same requirements as contained in the Department's regulations; and

2. adopts regulations which require the Director to be

provided with an opportunity to review the permit application, the analysis of the permit, and proposed permit conditions at least 30 days prior to issuance of an Operating Permit.

(b) If the Director of the Department determines that local program procedures for implementing all the portions of ADEM Admin. Code 335-3-16 are inadequate, or are not being effectively carried out, any authority delegated to the local programs to administer ADEM Admin. Code 335-3-16 may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the local air pollution control program.

(c) The Director reserves the authority contained in ADEM Admin. Code R. 335-3-16-.02(8)(h), to revoke any Operating Permit issued pursuant to this Chapter.

(d) Any Operating Permit issued by a local air pollution control program, including all conditions contained therein, is enforceable by the Department.

(8) General Standards for Granting Operating Permits.

(a) The Director shall deny an Operating Permit if the applicant does not show that every article, machine, equipment, or other contrivance, the use of which may cause the issuance of air contaminants, is so designed, controlled, or equipped with such air pollution control equipment, that it is expected to operate without emitting or without causing to be emitted air contaminants in violation of this Administrative Code.

(b) The Director shall deny an Operating Permit if the applicant does not present, in writing, a plan whereby the emission of air contaminants by every article, machine, equipment, or other contrivance described in the permit application, will be reduced during periods of an Air Pollution Alert, Air Pollution Warning, and Air Pollution Emergency in accordance with the provisions of ADEM Admin. Code 335-3-2, where such plan is required.

(c) Before an Operating Permit is granted, the Director may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the article, machine, equipment, or other contrivance described in the Operating Permit. In the event of such a requirement, the Director shall notify the applicant in writing of the required size, number, and location of the sampling platform; the access to the sampling platform; and the utilities for operating and sampling and testing equipment. The Director may also require the

applicant to install, use, and maintain such monitoring equipment or methods, including enhanced monitoring methods prescribed under Section 504(b) or Section 114(a)(3); sample such emissions in accordance with such methods, at such locations, intervals, and procedures as may be specified; and provide such information as the Director may require.

(d) Before acting on an application for an Operating Permit, the Director may require the applicant to furnish further information or further plans or specifications.

(e) If the Director finds that the article, machine, or other contrivance has been constructed not in accordance with the Operating Permit application, and if the changes noted are of a substantial nature in that the amount of air contaminants emitted by the article, machine, equipment, or other contrivance may be increased, or in that the effect is unknown, then he shall revoke the Operating Permit. The Director shall not accept any further application for an Operating Permit until the article, machine, equipment, or other contrivance has been reconstructed in accordance with said Operating Permit or until the applicant has proven to the satisfaction of the Director that the change will not cause an increase in the emission of air contaminants.

(9) Revocation of Operating Permits. Any Operating Permit granted by the Director may be revoked for any of the following causes:

(a) failure to comply with any conditions of the permit;

(b) failure to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods; and sample such emissions in accordance with such methods at such locations, intervals and procedures as the Director may prescribe in accordance with ADEM Admin. Code R. 335-3-1-.04(2);

(c) failure to comply with any provisions of any Departmental administrative order issued concerning the permitted Stationary Source or facility.

(d) failure to allow employees of the Department upon proper identification, to:

1. enter any premises where any article, machine, equipment, or other contrivance described in ADEM Admin. Code R. 335-3-16-.03(1) is located or in which any records are required to be kept under provisions of the permit and/or this Administrative Code;

2. have access to and copy any records required to be kept under provisions of the permit and/or this

Administrative Code;

3. inspect any monitoring equipment or practices being maintained pursuant to the permit and/or this Administrative Code; and

4. have access to and sample any discharge of air contaminants resulting directly or indirectly from the operation of any article, machine, equipment, or other contrivance described in ADEM Admin. Code R. 335-3-16-.03(1).

(e) failure to comply with this or any other Administrative Code of the Department.

(f) for any other cause, after a hearing which establishes, in the judgment of the Department, that continuance of the permit is not consistent with the purpose of the Act or this Administrative Code.

(10) Stack Heights

(a) Definitions. For purposes of this Section, the following terms will have the meanings ascribed in this Paragraph.

1. "Emission limitation" and "emission standard" mean a requirement, established by ADEM or the EPA Administrator, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

2. "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

3. "A stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

4. "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) Using that portion of a stack which exceeds good engineering practice stack height;

(ii) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) Increasing final exhaust gas plume rise by manipulating source-process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(iv) The preceding sentence does not include:

(I) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream:

(II) The merging of exhaust gas streams where:

A. The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams:

B. After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

C. Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source:

(III) Smoke management in agricultural or silvicultural prescribed burning programs;

(IV) Episodic restrictions on residential woodburning and open burning; or

(V) Techniques under ADEM Admin. Code R. 335-3-14-

.02(10)(a)4.(iii) which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

5. "Good engineering practice" (GEP) stack height means the greater of:

(i) 65 meters measured from the ground-level elevation at the base of the stack:

(ii)(I) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR 51 and 52, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation:

$$H_g = 2.5H,$$

(II)For all other stacks,

$$H_g = H + 1.5\ L,$$

where

H_g = good engineering practice stack height measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width of nearby structure(s),

provided that the Director may require the use of a field study or fluid model to verify GEP stack height for the source; or

(iii) The height demonstrated by a fluid model or a field study approved by the Director, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or nearby terrain features.

6. "Nearby" as used in Subparagraph 335-3-14-.02(10)(a)5. of this Paragraph is defined for a specific structure or terrain feature and

(i) for purposes of applying the formulas provided in Subdivision 335-3-14-.02(10)(a)5.(ii) means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and

(ii) for conducting demonstrations under Subdivision 335-3-14-.02(10)(a)5.(iii) means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (h_t) of the feature, not to exceed 2 miles if such feature achieves a height (h_t) 0.8 km from the stack that is at least 40 percent of the GEP stack height determined by the formula provided in Subdivision 335-3-14-.02(10)(a)5.(ii)(II) or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

7. "Excessive concentration" is defined for the purpose of determining GEP stack height under Subdivision 16.3.3(a)(5)(iii) and means:

(i) for sources seeking credit for stack height exceeding that established under Subdivision 335-3-14-.02(10)(a)5.(ii), a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than a NAAQS. For sources subject to the PSD program (Rule 335-3-14-.04), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emissions rate to be used in making demonstrations under this Rule shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the source owner or operator;

(ii) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under Subdivision 335-3-14-.02(10)(a)5.(ii), either:

(I) a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects as provided in Subdivision 335-3-14-.02(10)(a)7.(i), except that the emission rate specified elsewhere in this Administrative Code

(or, in the absence of such a limit, the actual emission rate) shall be used, or

(II) the actual presence of a local nuisance caused by the existing stack, as determined by the Director; and

(iii) for sources seeking credit after January 12, 1979, for a stack height determined under Subdivision 335-3-14-.02(10)(a)5.(ii) where the Director requires that use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in Subdivision 335-3-14-.02(10)(a)5.(ii), a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(b) Before acting on any Major Source Operating Permit, the Director shall require that the degree of emission limitation required of any source for control of any air pollutants shall not be affected by so much of any source's stack height that exceeds GEP or by any other dispersion technique, except as provided in Paragraph 335-3-14-.02(10)(c).

(c) The provisions of Paragraph 335-3-14-.02(10)(b) shall not apply to stack heights in existence, or dispersion techniques implemented, prior to December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed or for which major modifications, as defined pursuant to Subparagraphs 335-3-14-.05(2)(d) and 335-3-14-.04(2)(b)1., were carried out after December 31, 1970.

(d) If any existing source, after appropriate application of the preceding limitations and provisions, is found to exceed or potentially exceed a NAAQS or PSD increment, when operating within previously established emission limitations, the emissions limitations applicable to that source shall be modified so as to eliminate and prevent the exceedance.

(e) If any new source or source modification, after appropriate application of the preceding limitations and provisions, is predicted to exceed a NAAQS or PSD increment when evaluated under emission limitations consistent with other applicable rules and regulations, the emission limitations considered shall be deemed inadequate and different emission limits, based on air quality

considerations, shall be made applicable.

(f) If any source provides a field study or fluid modeling demonstration proposing a GEP stack height greater than that allowed by Subdivision 335-3-16-.02(10)(a)5.(i) and 335-3-16-.02(10)(a)5.(ii), then the public will be notified of the availability of the study and provided the opportunity for a public hearing before any new or revised emission limitation or permit is approved.

(g) The actual stack height used or proposed by a source shall not be restricted in any manner by requirements of this Section.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8
History: Effective Date: December 28, 1993.
Amended:

335-3-16-.03 Applicability

(1) Except as exempted under item (2) below and elsewhere herein, the following sources are subject to the permitting requirements under this Administrative Code:

(a) Any major source as defined under Administrative Code R. 335-3-16-.01 of this chapter;

(b) Any source subject to a standard, limitation, or other requirement under ADEM Admin. Code 335-3-10 or 335-3-11 of this Administrative Code;

(c) Any affected source as defined under Administrative Code R. 335-3-16-.01 of this chapter;

(2) The following sources are exempt from the requirements of this chapter:

(a) Non-major sources subject to ADEM Admin. Code 335-3-10 or 335-3-11 of this Administrative Code prior to July 21, 1992;

(b) Non-major sources subject to ADEM Admin. Code 335-3-10 or 335-3-11 of this Administrative Code which have an applicability date after July 21, 1992 that have been exempted by the Administrator from the requirements of 40 CFR 70;

(c) Wood heaters subject to ADEM Admin. Code 335-3-10 of this Administrative Code and asbestos demolitions and renovation sources subject to ADEM Admin. Code 335-3-11 of this Administrative Code.

335-3-16-.04

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8
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Amended:

335-3-16-.04 Permit Application Requirements

(1) Upon becoming subject to this Administrative Code, a source must submit an application, as described in this rule within 12 months. The Director may require some sources to submit their applications earlier than 12 months after the rules in this Chapter become applicable if it is determined that earlier submittal is necessary to satisfy the requirements in ADEM Admin. Code R. 335-3-16-.12(1) of this Administrative Code. The Department shall notify any emission source that must submit early applications at least one year in advance of the date the submittal is due.

(2) Sources subject to section 112 (g) or subject to preconstruction review under title I of the Act must apply for a permit under this Chapter within 12 months after commencing operation, except, when an existing permit issued under this chapter prohibits construction or a change in operation, a permit revision must be obtained before commencing operation.

(3) Renewal. An application for renewal shall be submitted at least six (6) months before the date of permit expiration, unless a longer period (not to exceed 18 months) is specified in the permit.

(4) Applications for initial phase II acid rain permits shall be submitted by January 1, 1996 for sulfur dioxide (SO2) and by January 1, 1998 for nitrogen oxides (NOx).

(5) Complete application. Unless the Department notifies the permit applicant in writing that the application is not complete, the application is considered complete 60 days after receipt by the Department. If, while processing the application, the Department determines that more information is needed to evaluate the application, the applicant must submit such information within 30 days or for such other reasonable time as set by a written request(s) by the Department.

(6) A source may operate without a permit under this Chapter between the date the application has been deemed complete and the date the final permit is issued, provided that the applicant submits any requested additional material by the deadline(s) specified by the Department.

(7) Duty to supplement or correct an application. A source must submit additional information to the Department

to supplement or correct an application promptly after becoming aware of the need for additional or corrected information. Also, a source must supply to the Department additional information concerning any new requirements which have become applicable after a complete application has been filed but before a draft permit is released.

(8) Standard application form and required information. The following information shall be included in an application by a source for a permit under this chapter:

(a) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact;

(b) A description of the source's processes and products (by four-digit Standard Industrial Classification Code), including any processes and products associated with each alternate scenario that is identified by the source and a list of insignificant sources and the basis for the determination(s);(c) The following emissions-related information:

1. A list of all emissions of pollutants for which the source is considered to be major and a list of all emissions of regulated air pollutants. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this Rule. The source shall submit additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to determine the amount of any permit fees owed under the fee schedule approved pursuant to ADEM Admin. Code 335-1-7-.04;

2. Identification and description of all points of emissions described in subparagraph (8)(c)1. of this rule in sufficient detail to establish the basis for fees and the applicability of the requirements of this chapter;

3. Emissions rates of all pollutants in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, or alternative method approved by the Department's Director;

4. The following information to the extent it is needed to determine or regulate emissions: fuels to be used, rate of fuel use, raw materials that will be used in the production process, production rates, and operating schedules;

5. Identification and description of all air pollution

control equipment and compliance monitoring devices or activities that will be used by the source;

6. Limitations that will be placed on the source's operation so as to affect emissions or any work practice standards that will be implemented, where applicable, for all regulated pollutants.

7. Other information that may be required to address other applicable requirements (including , but not limited to, information relating to stack height limitations developed pursuant to section 123 of the Act).

8. Calculations on which the information in items 1. through 7. above are based.

9. Exemptions

(i) Insignificant activities, including insignificant changes, shall be exempted from the provisions of this Chapter, provided they are listed in the permit application. Notice shall be sent to the Director in the event of insignificant changes to a specific emissions unit that increase potential emissions of criteria pollutants by less than 5 tons per year or any pollutant listed in Appendix G of ADEM Admin. Code Chap. 335-3-16 by less than 1,000 pounds per year and that are not identified on the list of insignificant changes in emissions as provided in ADEM Admin. Code R. 335-3-16-.01(o),

(ii) Trivial activities, including trivial changes, shall be exempted from all the provisions of this Chapter.

(d) The following air pollution control requirements:

1. Citations and descriptions of all applicable statutory and administrative code requirements, and

2. A description of or reference to any applicable test methods for determining compliance with each applicable statutory or administrative code requirement.

(e) Other information that may be required by the Department to enforce and implement other requirements of this chapter;

(f) An explanation of all proposed exemptions from otherwise applicable requirements;

(g) Additional information determined by the Department to be necessary to define alternative operating scenarios that are identified by the source pursuant to ADEM Admin. Code R. 335-3-16-.05(13).

(h) A compliance plan for the source that contains the following:

1. A description of the compliance status of the source with respect to all applicable requirements and a compliance schedule.

2. A statement that the source will continue to comply with all regulatory requirements that it is now in compliance with;

3. A statement that the source will, on a timely basis, meet such requirements that will become effective during the permit term unless a more detailed schedule is expressly required by the applicable requirement;

4. A narrative description of how the source will achieve compliance with requirements for which the source is not in compliance at the time of permit issuance with a compliance schedule for the source. Any schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall be at least as stringent as any compliance schedule that is contained in any judicial consent decree or administrative order to which the source is subject. Any schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.

5. A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

6. The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(i) A compliance certification, including the following:

1. A certification of compliance with all applicable requirements by a responsible official consistent with paragraph ADEM Admin Code R. 335-3-16-.04(9) and section 114(a)(3) of the Act, as it relates to the enhanced monitoring requirements;

2. A statement of methods used for determining

compliance, including a description of monitoring, record keeping, and reporting requirements and test methods;

3. A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if required by the underlying applicable requirement or by the Department; and

4. A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(j) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans as required by regulations promulgated under title IV of the Act.

(9) Certification of truth, accuracy and completeness.

(a) Any application form, report, or compliance certification submitted pursuant to this Administrative Code shall contain certification by a responsible official of truth, accuracy, and completeness, except as provided in Subparagraph 335-3-16-.04(9)(b). This certification and any other certification required under this Chapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(b) Certification for completeness shall not be required for initial applications that will not be processed in the first year the regulations in this Chapter are effective. A certification for completeness for such applications shall be required when the Department begins processing the application and requests additional information.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8
History: Effective Date: December 28, 1993.

Amended:

335-3-16-.05 Permit Content: All permits required under this Chapter shall include certain standard permit requirements. The permits shall contain the following:

(1) Applicable emissions limitations and standards and operational requirements and limitations necessary to assure compliance with all applicable requirements at the time of permit issuance. In addition, the permit shall include:

(a) A statement or reference to the origin and

authority for each term or condition in the permit and any difference in form as compared to the applicable requirement under this Chapter upon which the term or condition is based; and

(b) A statement to the effect that where an applicable requirement of this chapter is more stringent than an applicable requirement of regulations promulgated under title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Department.

(2) Duration of Operating Permits

(a) The Department shall issue permits for a fixed period of five years, except as provided in subparagraph (b) below.

(b) Solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act shall have a fixed term not to exceed 12 years. However, said permits shall be reviewed every five years.

(c) Permits which are issued for new emission units before the units become operational shall be effective for five years after operation of the unit commences.

(3) Monitoring and record keeping requirements

(a) Permits shall contain the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

2. Where the applicable requirement does not require periodic testing or instrumental or non instrumental monitoring (e.g. record keeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit, as reported pursuant to subparagraph (3)(c). of this rule. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. In certain instances record keeping provisions may be sufficient to meet the requirements of this subparagraph of this rule; and

3. As necessary, information concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to record keeping, the permit shall

incorporate all requirements of this chapter and require, where appropriate, the following:

1. Records of required monitoring information of the source that include the following:

(i) The date, place as defined in the permit, and time of all sampling or measurements;

(ii) The date(s) analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of all analyses; and

(vi) The operating conditions that existed at the time of sampling or measurement;

(vii) Retention of records of all required monitoring data and support information of the source for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit.

(c) Permits shall incorporate all reporting requirements of this chapter and require the following:

1. The source to submit reports to the Department of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in said reports. All required reports must be certified by a responsible official consistent with ADEM Admin. Code 335-3-16-.04(9).

2. The source to report deviations from permit requirements within 2 working days of such deviations, including those attributable to upset conditions as defined in the permit, the probable cause of said deviations, and any corrective actions or preventive measures that were taken.

(4) Permits shall contain statements to the effect that emissions exceeding any allowances that the source lawfully holds under title IV of the Act or the regulations promulgated thereunder are prohibited. Furthermore, the following shall be applicable:

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such

increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated pursuant to title IV of the Act.

(5) Permits shall include a severability clause for the purpose of continuation of a permit in the event a portion(s) of the permit is successfully challenged in a legal forum.

(6) Permits shall contain a provision that states that the source (permittee) must comply with all conditions of this administrative code: Noncompliance with a permit will constitute a violation of the Act and this administrative code and may result in an enforcement action; including but not limited to, permit termination, revocation and reissuance, or modification; or denial of a permit renewal application by the source.

(7) Permits shall contain a provision that states the source (permittee) shall not use as a defense in an enforcement action, that maintaining compliance with conditions of the permit would have required halting or reducing the permitted activity.

(8) Permits shall contain a provision that states that the permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the source (permittee) for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance will not stay any permit condition.

(9) Permits shall contain a provision that states that no property rights of any sort, or any exclusive privilege are conveyed through the issuance of the permit.

(10) Permits shall contain a provision that states that the source (permittee) shall furnish to the Department, within 30 days or for such other reasonable time as the Department may set, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon receiving a specific request, the permittee shall also furnish to the Department copies of records required to be kept by the permit.

(11) Permits shall state that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(12) The permit shall contain a provision that quantifies the terms and conditions for reasonably anticipated alternative operating scenarios that were identified by the source in its application and are acceptable to the Department. The alternative operating scenarios terms and conditions shall:

(a) Require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this chapter.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8
History: Effective Date: December 28, 1993.
Amended:

335-3-16-.06 Federally Enforceable Requirements

(a) All terms in a permit that are required to be part of a permit pursuant to the Act are federally enforceable by EPA, the Department and citizens in general. However, those provisions of a permit that are not required under the Act are considered to be state permit provisions and consequently, are not federally enforceable by EPA and citizens in general.

(b) Those provisions of a permit that are state provisions shall be separated from the federally enforceable terms. Such state provisions shall be clearly identified in the permit.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8
History: Effective Date: December 28, 1993.
Amended:

335-3-16-.07 Compliance Requirements: Permits shall contain the following elements with respect to compliance:

(1) Compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to

assure compliance with the terms and conditions of the permit. Any document (including reports submitted by the source (permittee)) that is required in a permit shall contain a certification by a responsible official that meets the requirements of ADEM Admin Code R. 335-3-16-.04(9).

(2) Inspection and entry requirements that mandate that, the permittee shall allow the Department or an authorized representative, upon presentation of credentials and other documents that may be required by law, to conduct the following:

(a) Enter upon the permittee's premises where a source is located or emissions-related activity is conducted, or where records must be kept pursuant to the conditions of a permit;

(b) Review and/or copy, at reasonable times, any records that must be kept pursuant to the conditions of a permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required pursuant to a permit; and

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements.

(3) A schedule of compliance consistent with ADEM Admin Code R. 335-3-16-.04(8)(h).

(4) Progress reports consistent with an applicable schedule of compliance and ADEM Admin Code R. 335-3-16-.04(8)(h). to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Department. Such progress reports shall contain the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and/or dates when such activities, milestones or compliance were achieved; and

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(a) The frequency of submissions of compliance certifications, which shall be at least annually unless more frequent periods are specified according to the specific rule governing the source or required by the Department.

(b) A means for monitoring the compliance of the source with its emissions limitations, standards, and work practices in accordance with ADEM Admin Code R. 335-3-16-.05(3);

(c) A requirement that the compliance certification include the following:

1. The identification of each term or condition of the permit that is the basis of the certification;

2. The compliance status;

3. Whether compliance has been continuous or intermittent;

4. The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with ADEM Admin Code R. 335-3-16-.05(3); and

5. Such other facts as the Department may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the Administrator as well as to the Department; and

(e) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(6) Such other provisions as the Department may require.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8
History: Effective Date: December 28, 1993.
Amended:

335-3-16-.08 General Permits

(1) The Department may issue a general permit to any source category if it concludes that the category is appropriate for permitting on a generic basis after notice and opportunity for public participation provided under ADEM Admin Code R. 335-3-16-.15(4). No general permit may be issued for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Act.

(2) A general permit may be issued for a source category based upon an application from a source within the source category or upon the Department's own initiative. The same procedures for issuance of a general permit are applicable as for any other permit issued under this chapter.

(3) A general permit may be issued for the following purposes:

(a) to establish terms and conditions to implement applicable requirements for a source category;

(b) to establish terms and conditions to implement applicable requirements for specified categories of changes to permitted sources;

(c) to establish terms and conditions for new requirements that apply to sources with existing permits; and

(d) to establish federally-enforceable caps on emissions from sources in a specified category.

(4) The Department may issue a general permit if it finds that:

(a) there are several permittees or permit applicants who have the same or substantially similar operations, emissions, activities, or facilities;

(b) the permittees or permit applicants emit the same types of regulated air pollutants;

(c) the operations, emissions, activities, or facilities are subject to the same or similar standards, limitations, and operating requirements; and

(d) the operations, emissions, activities, or facilities are subject to the same or similar monitoring requirements.

(5) A general permit issued under this section shall identify criteria by which sources may qualify for the general permit. After a general permit has been issued, any source may submit a request to be covered under the permit.

(a) A request for coverage under a general permit shall identify the source and provide information sufficient to demonstrate that it falls within the source category covered by the general permit, together with any additional information that may be specified in the general permit.

(b) A final action approving a request for coverage under a general permit shall not require repeating the public participation procedures.

(6) A copy of the general permit, together with a list of sources approved for coverage under it, shall be kept on file for public review at the Department's office in Montgomery.

(7) If some, but not all, of a source's operations, activities, and emissions are eligible for coverage under one or more general permits, the source may apply for and receive coverage under the general permits for the operations, activities, and emissions that are so eligible. If the source is required under ADEM Admin Code R. 335-3-16-.04 to obtain a permit addressing the remainder of its operations, activities, and emissions, it may apply for and receive a permit that addresses specifically only those items not covered by general permits. In such a case, the source's permit shall identify all operations, activities, and emissions that are subject to general permits and incorporate those general permits by reference or use this for General Permits instead of (1) - (6) above

(8) If a source that is covered by a general permit is later determined to have not qualified for such general permit, the source shall have been operating without an operating permit.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8
History: Effective Date: December 28, 1993.
Amended:

335-3-16-.09 Temporary sources

(1) One permit for sources which move at least once during term of permit: A single permit may be issued authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(a) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(b) Requirements that the owner or operator notify in writing the permitting authority at least ten days in advance of each change in location; and

(c) Conditions that assure compliance with all other provisions of this section.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8
History: Effective Date: December 28, 1993
Amended:

335-3-16-.10 Permit shield.

(1) Except as provided in this Rule, the Department may expressly include in an Operating Permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An Operating Permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this Rule or in any Operating Permit shall alter or affect the following:

(a) The provisions of section 303 of the Act (emergency orders), including the authority of the Administrator under that section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(d) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8
History: Effective Date: December 28, 1993.
Amended:

335-3-16-.11 Exceptions to Violations of Emissions Limits

(1) The Director may, in the operating permit, exempt on a case-by-case basis exceedances of emission limits which cannot reasonably be avoided, such as during periods of start-up, shut-down or load change.

(2) Emergency provision

(a) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(b) Exceedances of emission limits during emergencies (as defined above) at a facility may be exempted from being violations provided that:

1. The permittee can identify the cause(s) of the emergency;

2. At the time of the emergency, the permitted facility was being properly operated;

3. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit;

4. The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. Such notice shall include those deviations attributable to upset conditions as defined in the permit, the probable cause of said deviations, and any corrective actions or preventive measures that were taken. Within 5 working days of the emergency, a written documentation what was reported in the notice of the emergency shall be submitted to the Department; and

5. The permittee immediately documented the emergency exceedance in an "Emergency Log", which shall be maintained for 5 years in a form suitable for inspection upon request by a representative of the Department.

(c) The Director shall be the sole determiner of whether an emergency has occurred.

(d) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8
History: Effective Date: December 28, 1993
Amended:

335-3-16-.12 Permit Issuance

(1) Initial

(a) All major sources must be issued operating permits within 3 years of the date that EPA approves the Department's program.

(b) At least one-third of the permits for sources subject to this chapter must be issued each of the three years following EPA's approval of the Department's program.

(c) If the Department is granted interim approval, then the provisions of paragraphs (a) and (b) do not apply.

1. During each year of interim approval, at least 20% of the permits subject to this chapter must be issued. Thereafter, at least one-third of the remaining sources subject to this chapter must be issued each year.

2. If interim approval is granted, the emissions from the sources subject to this chapter that are permitted in the first three years of the program shall amount to 80% of the emissions for all sources subject to this chapter.

(d) Any application for a new source must be acted on within 18 months of receiving a complete application.

(2) Renewals

(a) Applications for permit renewal shall be subject to the same procedural requirements, including those for public participation, and affected State and EPA review, that apply to initial permit issuance under this chapter.

(b) A source's right to operate shall terminate upon the expiration of its permit unless a timely and complete renewal application has been submitted at least six months, but not more than 18 months, before the date of expiration or the Department has taken final action approving the source's application for renewal by the expiration date.

(c) If a timely and complete application for a permit renewal is submitted, but the Department fails to take final action to issue or deny the renewal permit before the end of

the term of the previous permit, then the permit shall not expire until the renewal permit has been issued or denied, and any permit shield granted for the permit shall continue in effect during that time.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8
History: Effective Date: December 28, 1993.
Amended:

335-3-16-.13 Permit Modifications or Amendments

(1) Administrative

(a) An administrative permit amendment is a permit revision that:

1. Corrects typographical errors;

2. Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

3. Requires more frequent monitoring or reporting by the permittee;

4. Incorporates a general permit into an Operating Permit.

5. Allows for a change in ownership or operational control of a source where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;

6. Incorporates into a permit issued under this chapter the requirements from preconstruction review permits authorized under this Administrative Code, provided that the process used meets procedural requirements substantially equivalent to the requirements of ADEM Admin. Code R. 335-3-16-.12 and 335-3-16-.14 of this chapter that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in ADEM Admin. Code R. 335-3-16-.05 through 335-3-16-.11 of this chapter; or

7. Incorporates any other type of change which the Department has determined as part of the approved permit program under this chapter to be similar to those in subparagraphs 1.- 5. above.

(b) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.

(c) An administrative permit amendment may be made by the Department consistent with the following:

1. The Department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

2. The Department shall submit a copy of the revised permit to the Administrator.

3. The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(2) Flexibility (i.e., Section 502 (B) 10 changes): Modifications which are not modifications under title I of the Act, that contravene an existing permit condition and do not exceed emissions allowable under the permit can be done without modifying the permit if:

1. Written notification is given that describes the proposed change, the date of the change, any change in emissions, and any term or condition of the permit which is no longer valid due to the change

2. Notice is given to the Department and EPA at least 7 days before the change is made.

(3) Minor permit modification procedures

(a) Criteria

1. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement;

(ii) Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or

condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

A. A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I; and

B. An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act;

(v) Are not modifications under any provision of title I of the Act; and

(vi) Are not required by ADEM Admin. Code R. 335-3-16-.12 to be processed as a significant modification.

2. Notwithstanding Subparagraph 335-3-16-.13(3)(a) of this rule, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

(b) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of ADEM Admin. Code R. 335-3-16-.04(8) of this part relative to the modification and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

2. The source's suggested draft permit;

3. Certification by a responsible official, consistent with ADEM Admin Code R. 335-3-16-.04(9), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

4. Completed forms for the Department to use to notify the Administrator and affected States as required under ADEM Admin Code R. 335-3-16-.15.

(c) EPA and affected State notification. Within 5 working days of receipt of a complete permit modification application, the Department shall notify the Administrator and affected States of the requested permit modification. The Department promptly shall send any notice of refusal to

accept any recommendations made by the Administrator or the affected States to the Administrator.

(d) Timetable for issuance. The Department may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Department that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the Department's receipt of an application under minor permit modification procedures or 15 days after the end of the Administrator's 45-day review period under ADEM Admin Code R. 335-3-16-.15(3), whichever is later, the Department shall:

1. Issue the permit modification as proposed;

2. Deny the permit modification application;

3. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

4. Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by ADEM Admin Code R. 335-3-16-.15(1) of this part.

(e) Source's ability to make change.

1. Ten days after the application has been submitted to the Department, the source may make the change for which they applied unless the change qualifies as a minor modification. After the source makes the change allowed by the preceding sentence, and until the Department takes any of the actions specified in ADEM Admin Code R. 335-3-16-.13(3)(d)1.-4., the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

2. If the Department notifies the source that the modification does not qualify as a minor modification within 10 days after receiving the application, then the source shall apply for the change as a significant modification.

(f) The permit shield under ADEM Admin. Code R. 335-3-16-.10 shall not extend to minor permit modifications.

(4) Significant Modifications. Modifications that are significant modifications under the ADEM Admin. Code R. 335-3-14-.04 or ADEM Admin. Code R. 335-3-14-.05 or are modifications under the NSPS or NESHAPS regulations must be

incorporated in the Operating Permit using the requirements for sources initially applying for an Operating Permit, including those for applications, public participation, review by affected States, and review by EPA, as described in ADEM Admin. Code R. 335-3-16-.04 and .14.

(5) Reopening for cause.

(a) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

1. Additional applicable requirements under the Act become applicable to a major source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire.

2. Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

3. The Department or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

4. The Administrator or the Department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(b) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(c) Reopenings under subparagraph 335-3-16-.13(5)(a) of this Rule shall not be initiated before a notice of such intent is provided to the source by the Department at least 30 days in advance of the date that the permit is to be reopened, except that the Department may provide a shorter time period in the case of an emergency.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8
History: Effective Date: December 28, 1993.

Amended:

335-3-16-.14 Off-Permit Changes

(1) Any change at a source holding an operating permit which is not addressed or prohibited in the federally enforceable terms and conditions of the permit may be designated by the owner or operator as an off-permit change, and may be made without revision to the federally enforceable terms and conditions of the operating permit, provided that the change:

(a) shall meet all applicable requirements;

(b) does not violate any federally enforceable permit term or condition;

(c) is not subject to any requirement or standard under title IV of the Clean Air Act; and _

(d) is not a modification under title I.

(2) Designation of a change as state-only affects only the federal requirements for processing of the change under the federal operating permit program. The owner or operator must comply with all applicable state permitting and preconstruction review requirements. Any change designated as state-only will be treated as permit revision under state permitting requirements and shall be processed in accordance with the administrative permit amendment provisions in ADEM 335-3-16-.13(1) or the minor permit modification provisions in ADEM 335-3-16-.13(3), except that the provisions of ADEM 335-3-16-.13(3)(d) shall not apply.

(3) The owner or operator of any permitted source who plans to make a change meeting the criteria set forth in this section may submit a request that the Director process the change application as an off-permit change, in accordance with paragraph (2) of this section.

(4) Any application pertaining to a change designated by the applicant as an off-permit change shall be submitted by the applicant to EPA in fulfillment of the obligation to provide written notice, provided, that no change meeting the criteria for an insignificant activity or trivial activity is subject to the procedures set forth in this section.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8
History: Effective Date: December 28, 1993
Amended:

335-3-16-.15 Permit Review by EPA, Affected States and Public.

(1) Transmission of information to EPA

(a) The Department shall submit each application, each proposed permit and each final permit to EPA. The Department may require the applicant to submit a copy of its application directly to EPA. The Department also shall submit a copy of the draft permit to the applicant at the same time that EPA is sent a copy.

(b) Upon agreement with EPA, the Department may submit a summary of the application instead of the full application.

(c) The Department shall keep 5 years of records of the information sent to EPA that is required in subparagraph 335-3-16-.14(1)(a) of this Rule.

(2) Review by affected states

(a) The Department shall give notice to each affected state of each draft permit on or before public notice, unless public notice is not required.

(b) The Department shall respond in writing its reasons for refusing to accept an affected State's or for refusing to accept the Administrator's recommendations.

(3) EPA objection

(a) If EPA objects in writing within 45 days of receipt of a proposed permit or prior to issuance of a final permit, the Department shall not issue the permit, except that the Department may issue a permit that is valid pursuant to Alabama's Air Pollution Control Act only. However, the Department shall advise the source that issuance of such permit shall not provide any protection from federal requirements.

(b) The objection must include the reasons for the objection and a description of the terms that the permit must include to respond to the objections. EPA must supply the applicant with a copy of the objection.

(c) Failure of the Department to do any of the following are also grounds for objection:

1. Comply with paragraphs (1) or (2) of this Rule.

2. Submit any information requested by EPA in writing necessary to review the permit

3. Process the permit under the significant permit

modification procedures (unless the modification is minor)

(4) Public participation. Except for modifications qualifying for administrative or minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall use the following procedures for public notice:

(a) Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice and also to persons on a mailing list developed by the Department for persons desiring notice of permit action, including persons who have requested in writing to be on such a list;

(b) The notice shall identify the affected facility; the name and address of the permittee; the address of the Department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, monitoring and compliance certification report, except for information entitled to be kept confidential, and all other materials available to the Department that are relevant to the permit decision; a brief description of the comment procedures required by this chapter; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

(c) The Department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing; and

(d) The Department shall keep a record of the comments made during the public participation process.

Author: Richard E. Grusnick
Statutory Authority: Code of Alabama 1975, §§22-22A-4, 22-22A-5, 22-22A-6, 22-22A-8
History: Effective Date: December 28, 1993.
Amended:

APPENDIX D

NONATTAINMENT AREAS

PM_{10}	(Sub-County Designations)
	None
Sulfur Dioxide	(Sub-County Designations)
	None
Ozone (Marginal)	(County-Wide Designations)
	Jefferson County Shelby County

Appendix G

Clean Air Act Amendments of 1990 - List of Hazardous Air Pollutants

CAS Number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
105602	Caprolactam
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters

3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethylether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylenedichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidenedichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)

108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methylchloroform (1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylenedichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine

8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidenechloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds(inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Over Emissions
0	Cyanide Compounds *1
0	Glycol ethers *2
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers *3
0	Nickel Compounds
0	Polycylic Organic Matter *4
0	Radionuclides (including radon) *5
0	Selenium Compounds

NOTE: For all listings above which contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

*1 X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)2

*2 Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH2CH2)n-OR' where

n = 1, 2, or 3
R = alkyl or aryl groups
R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-

(OCH2CH)n-OH. Polymers are excluded from the glycol category.

*3 Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

*4 Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100-C.

*5 A type of atom which spontaneously undergoes radioactive decay.

Part L - Appendix containing applicable Federal Regulations proposed for inclusion by reference in Chapters 335-5-10 and -11.

did not propose approval based on the requirements of new section 182(a)(2)(A). However, EPA believes that the good cause exception to notice-and-comment rulemaking applies and that the Agency, therefore, is not required to repropose approval of the submittal as meeting section 182(a)(2)(A). The agency's action on a SIP or SIP elements is rulemaking that is subject to the procedural requirements of the Administrative Procedure Act (APA). Section 553(a)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency for good cause determines that notice and comment are "impracticable, unnecessary or contrary to the public interest."

Notice and comment are impracticable and unnecessary in the present circumstance. Section 182(a)(2)(A) does not impose new requirements on the subject nonattainment areas. Rather, section 182(a)(2)(A) codifies the corrections nonattainment areas needed to make subject to the EPA SIP call letters issued in 1987 and 1988. Because the Bay Area AQMD SIP submittal meets the SIP call and, therefore, is consistent with the applicable pre-amendment guidance, EPA believes that the submittal also necessarily meets the requirements of section 182(a)(2)(A) of the amended Act. In EPA's earlier proposed approval of the Bay Area AQMD rule, EPA provided notice and an opportunity for comment on the consistency of the District's rule with EPA's pre-enactment guidance. Since notice and an opportunity for comment have been provided on that set of issues, and section 182(a)(2)(A) does not expand those requirements, it is unnecessary to repeat that process. In addition, it is impracticable for the Agency to take such action because, in light of the statutory time constraints on acting on SIPs, such a process would divert valuable agency resources from action on the large number of SIPs addressing new substantive requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). The Office of Management and Budget provided a two year waiver for Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: April 14, 1992.

John Wise,

Acting Regional Administrator.

Note: This document was received at the Office of the Federal Register on June 3, 1992.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(177)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(177) * * *

(E) Bay Area Air Quality Management District.

(*1*) Rule 8–5 adopted on May 4, 1988.

* * * * *

[FR Doc. 92–13377 Filed 6–9–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 60

[FRL 4136–3]

Standards of Performance for New Stationary Sources; Appendix A—Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: A rule entitled "Standards of Performance for New Stationary Sources; Addition of Methods for Measurement of Polychlorinated Dibenzo-p-Dioxins, Polychlorinated Dibenzofurans, and Hydrogen Chloride Emissions from Stationary Sources" was published in the Federal Register on February 13, 1991 (56 FR 5758). This rule promulgated Methods 23 and 26 for use at municipal waste combustors. In the rule, Method 26 contained several minor errors. This action corrects the method.

EFFECTIVE DATE: June 10, 1992.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Terry Harrison, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0163.

List of Subjects in 40 CFR Part 60

Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Municipal waste combustors, and Reporting and recordkeeping requirements.

Dated: May 14, 1992.

William K. Reilly,

Administrator.

Accordingly, 40 CFR part 60 is corrected by making the following correcting amendments:

PART 60—[Amended]

1. The authority citation for 40 CFR part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. In appendix A, Method 26, sections 2.1.1, 2.1.2, 2.1.5, 2.3.3, 4.1.2, 4.4.1, 6.4, and Citations 1 and 3 of 8. Bibliography are revised; the first listing of sections 4 through 4.1.2, and the relisting of Equation 26–1 and Section 3.2.4 that follow are removed; Sections 2.1.6 through 2.1.9 are redesignated as Sections 2.1.7 through 2.1.10, and Sections 4.1.3 and 4.1.4 are redesignated as Sections 4.1.4 and 4.1.5; and new

Sections 2.1.6, 2.1.11, 2.1.12, 4.1.3, and 6.4.1 through 6.4.3 are added to read as follows:

Appendix A—Test Methods

* * * * *

Method 26—Determination of Hydrogen Chloride Emissions From Stationary Sources

* * * * *

2. * * *

2.1 * * *

2.1.1 Probe. Borsilicate glass, approximately 3/8-in. (9-mm) I.D. with a heating system to prevent moisture condensation. A Teflon-glass filter in a mat configuration shall be installed behind the probe to remove particulate matter from the gas stream (see section 2.1.5). A glass wool plug should *not* be used to remove particulate matter since a negative bias in the data could result.

2.1.2 Three-Way Stopcock. A borosilicate glass three-way stopcock with a heating system to prevent moisture condensation. The heated stopcock should connect to the outlet of the heated filter and the inlet of the first impinger. The heating system shall be capable of preventing condensation up to the inlet of the first impinger. Silicone grease may be used, if necessary, to prevent leakage.

* * * * *

2.1.5 Filter. A 25-mm (or other size) Teflon-glass mat, Pallflex TX40HI75 (Pallflex Inc., 125 Kennedy Drive, Putnam, CT 06260). This filter is in a mat configuration to prevent fine particulate matter from entering the sampling train. Its composition is 75 percent Teflon/25 percent borosilicate glass. Other filters may be used, but they must be in a mat (as opposed to a laminate) configuration and contain at least 75 percent Teflon.

2.1.6 Filter Holder and Support. The filter holder should be made of Teflon or quartz. The filter support shall be made of Teflon. All-Teflon filter holders and supports are available from Savillex Corp., 5325 Hwy 101, Minnetonka, MN 55345.

* * * * *

2.1.11 Temperature Measuring Devices. Temperature measuring device to monitor the temperature of the probe and a thermometer or other temperature measuring device to monitor the temperature of the sampling system from the outlet of the probe to the inlet of the first impinger.

2.1.12 Ice Water Bath. To minimize loss of absorbing solution.

* * * * *

2.3 * * *

2.3.3 Ion Chromatograph. Suppressed or nonsuppressed, with a conductivity detector and electronic integrator operating in the peak area mode. Other detectors, strip chart recorders, and peak height measurements may be used.

* * * * *

4. * * *

4.1 * * *

4.1.2 Adjust the probe temperature and the temperature of the filter and the stopcock, i.e., the heated area in Figure 26-1 to a temperature sufficient to prevent water condensation. This temperature should be at least 20° C above the source temperature, but not greater than 120° C. The temperature should be monitored throughout a sampling run to ensure that the desired temperature is maintained.

4.1.3 Leak-Check Procedure. A leak-check prior to the sampling run is optional; however, a leak-check after the sampling run is mandatory. The leak-check procedure is as follows: Temporarily attach a suitable (e.g., 0-40 cc/min) rotameter to the outlet of the dry gas meter and place a vacuum gauge at or near the probe inlet. Plug the probe inlet, pull a vacuum of at least 250 mm Hg (10 in. Hg), and note the flow rate as indicated by the rotameter. A leakage rate not in excess of 2 percent of the average sampling rate is acceptable. (*NOTE:* Carefully release the probe inlet plug before turning off the pump.) It is suggested (not mandatory) that the pump be leak-checked separately, either prior to or after the sampling run. If done prior to the sampling run, the pump leak-check shall precede the leak-check of the sampling train described immediately above; if done after the sampling run, the pump leak-check shall follow the train leak-check. To leak-check the pump, proceed as follows: Disconnect the drying tube from the probe-impinger assembly. Place a vacuum gauge at the inlet to either the drying tube or pump, pull a vacuum of 250 mm (10 in.) Hg, plug or pinch off the outlet of the flowmeter, and then turn off the pump. The vacuum should remain stable for at least 30 sec. Other leak-check procedures may be used, subject to the approval of the Administrator, U.S. Environmental Protection Agency.

* * * * *

4.4 * * *

4.4.1 The IC conditions will depend upon analytical column type and whether suppressed or nonsuppressed IC is used. An example chromatogram from a nonsuppressed system using a 150-mm Hamilton PRP-X100 anion column, a 2 ml/min flow rate of 4 mM 4-hydroxy benzoate solution adjusted to a pH of 8.6 using 1 N NaOH, a 50-μl sample loop, and a conductivity detector set on 1.0 μS full scale is shown in Figure 26-2.

* * * * *

6. * * *

6.4 Audit Results.

6.4.1 Calculate the concentrations in mg/dscm using the specified sample volume in the audit instructions.

Note: Indication of acceptable results may be obtained immediately by reporting the audit results in mg/dscm and compliance results in total μg HCl/sample to the responsible enforcement agency. Include the results of both audit samples, their identification numbers, and the analyst's name with the results of the compliance determination samples in appropriate reports to the EPA Regional Office or the appropriate enforcement agency. Include this information with subsequent analyses for the same enforcement agency during the 30-day period.

6.4.2 The concentrations of the audit samples obtained by the analyst shall agree within 10 percent of the actual concentrations. If the 10 percent specification is not met, reanalyze the compliance samples and audit samples, and include initial and reanalysis values in the test report.

6.4.3 Failure to meet the 10 percent specification may require retests until the audit problems are resolved. However, if the audit results do no affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

* * * * *

8. * * *

1. Steinsberger, S.C. and J.H. Margeson. "Laboratory and Field Evaluation of a Methodology for Determination of Hydrogen Chloride Emissions form Municipal and Hazardous Waste Incinerators." U.S. Environmental Protection Agency, Office of Research and Develpment. Report No. 600/3-89/064. April 1989. Available from the National Technical Information Service, Springfield, VA 22161 as PB89220586/AS.

* * * * *

3. Cheney, J.L. and C.R. Fortune. Improvements in the Methodology for Measuring Hydrochloric Acid in Combustion Source Emissions. J. Environ. Sci. Health. *A19*(3): 337-350. 1984.

* * * * *

Appendix A—[Amended]

3. In appendix A, sections 1.1, 1.2, 1.3, and 1.4 of Method 26, by revising "Cl^-", "Cl_2", "HCl", and "HOCl" wherever they occur to read "Cl^-", "Cl_2", "HCl", and "HOCl", respectively.

4. In sections 1.3 and 2.2.2 of Method 26, by removing the last two sentences.

5. In section 3.2.3 of Method 26, by revising "100" in the third sentence to read "110", and by revising Eq. 26-1 to read as follows:

$$\mu g\ Cl^-/ml = g\ of\ NaCl \times 10^3 \times 35.45/58.44 \quad \text{Eq. 26-1}$$

6. In newly designated section 4.1.5 of Method 26, by revising "Figure 26-3" in the first sentence to read "Figure 26-1".

7. By amending section 7.2 of Method 26 as follows:

a. By removing "(35.453)" and "(102.84)" in Equation 26-2 and adding in their respective places "(35.45)" and "(102.8)".

b. By revising "Hcl" in the first definition after Equation 26-2 to read "HCl".

c. By revising "35.453" in the last definition after Equation 26-2 to read "35.45".

8. In section 7.3 of Method 26, by revising Equation 26-3 to read as follows:

$$C = K\ m/V_{m(std)} \quad \text{Eq. 26-3}$$

[FR Doc. 92-12302 Filed 6-9-92; 8:45 am]

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interested persons to submit written data, views, or arguments concerning the interim rule.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended by adding new section 290 to read as follows:

CHAPTER 2—CONDITIONS FOR MAILING

* * * * *

290 International Customized Mail

290.1 Description

International Customized Mail (ICM) service is an international business mail service that is available only pursuant to an ICM service agreement between the Postal Service and a mailer meeting the requirements in 290.2. The Postal Service provides ICM service, on a mailer-specific basis, pursuant to the terms and conditions stipulated in a particular ICM service agreement.

290.2 Qualifying Mailers

To qualify for ICM service, a mailer must be capable, on an annualized basis, of either (1) tendering at least one million pounds of international mail to the Postal Service, or (2) paying at least two million dollars in international postage to the Postal Service. The mailer must also be capable of tendering all of its ICM mail to the Postal Service from a single location.

290.3 ICM Service Agreement

290.31 Provisions in All ICM Service Agreements. Each ICM service agreement must set forth the following:

a. The term of the agreement, including any renewal options.

b. The type of mail to be tendered by the mailer.

c. The destination country or countries.

d. The services to be provided by the Postal Service, including any speed-of-delivery targets.

e. Minimum volume commitments for each service.

f. Postage and method of payment.

g. Weight and size limits.

h. Preparation requirements.

i. Makeup requirements.

j. Any other obligations of either party.

290.32 Origin

The ICM service agreement must stipulate the location from which the mailer is required to tender its items to the Postal Service.

290.4 Postal Bulletin Notifications. Within 30 days of entering into an ICM service agreement, the Postal Service must publish the following information about the agreement in the Postal Bulletin:

a. The term of the agreement, including any renewal option.

b. The type of mail involved.

c. The destination country or countries.

d. A brief description of each of the services to be provided by the Postal Service.

e. Minimum volume commitments for each service.

f. A brief description of any worksharing to be performed by the mailer.

g. The agreed-upon rate of each service at the volume level committed by the mailer.

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 20.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-16274 Filed 7-9-92; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-4035-3]

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Amendments to Method 24 for the Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule modifies Method 24 to incorporate procedures for the determination of volatile matter content, density, volume solids, and water content for multicomponent surface coatings. This action is necessary because Method 24 refers to the American Society for Testing and Materials (ASTM) Method, D 2369-81, for determination of volatile content of coatings that was originally incorporated by reference (48 FR 373 (1983)). The ASTM specifically excluded multicomponent coatings in its applicability statement, but it was not EPA's intent to exclude these coatings. This inconsistency resulted when Method 24 was published in 1980 with its reference to the ASTM Method D 2369-81 before the final version of the ASTM method was published. The EPA believed this ASTM method would apply to all surface coatings. However, in its final form, Method D 2369-81 contained a statement exempting multicomponent coatings. New Source Performance Standards, which refer to Method 24, regulate all surface coatings which include multicomponent coatings. By adding minor technical procedures to Method 24, ASTM D 2369 can be used to determine the volatile matter content of multicomponent coatings.

DATES: *Effective Date.* July 10, 1992.

Judicial Review: Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Incorporation by Reference: The incorporation by reference of certain publications in these standards is approved by the Director of the Federal Register as of July 10, 1992.

Docket: A Docket, number A-91-49, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. and Noon and 1:30 and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section (LE-131), Waterside Mall, room M1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Lori T. Lay or Gary McAlister, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-4825.

SUPPLEMENTARY INFORMATION:

I. Summary

Method 24 is being corrected to make it applicable to multicomponent coatings by incorporating the following changes:

A. The coating components be mixed in a container according to the manufacturer's recommendations. Aliquots are immediately removed for analysis.

B. Aliquots for determination of volatile matter content are allowed to stand for 1 to 24 hrs before the sample is oven dried.

II. The Rulemaking

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations (New Source Performance Standards or State implementation plans), nor does it change any emission standard. Rather, the rulemaking would simply amend an existing test method associated with emission measurement requirements in the current regulations that would apply irrespective of this rulemaking.

The Agency views this method correction as being of a minor technical nature and notes that it was developed in consultation with the regulated community. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b) for a determination that the issuance of a notice of proposed rulemaking is unnecessary. This action will take effect on August 10, 1992, unless adverse or critical comments are received by that date. If such comments are received, the portion of this action objected to will be withdrawn through the publication of a **Federal Register** notice. If any portion of this action is withdrawn, it will be included in a notice of proposed rulemaking and a comment period will be established. If no such comments are received, the public is advised that this action will be effective as of August 10, 1992.

III. Agency Efforts To Obtain Input From Inside and Outside the Government

The EPA solicited input from members of an interagency informal work group and ASTM who were involved with the drafting of the original regulation. The EPA distributed a summary of the proposed changes to Method 24 to the members of the informal review committee that was involved in the development of this regulation. The EPA received four responses: most of which contained multiple comments. The changes resulting from the comments are summarized in this preamble.

A. Users have been given the option of mixing the coating on a weight basis as well as a volume basis. One respondent believed that, although volume ratios rather than weight ratios are commonly given in the directions for mixing multicomponent paints, each component must be weighed to determine the correct proportion for mixing. Since liquid components expand at high temperatures, incorrect measurement of component volumes may result. Therefore, if each component is weighed and the density of each component determined, the correct volume can be calculated. The Agency agrees with this point and has amended the procedure accordingly.

B. A procedure for measuring "exempt" solvents has been included. One respondent suggested that procedures be included for the determination of exempt solvents. The Agency amended the procedure to include ASTM Method D4457–85 for the determination of dichloromethane and 1,1,1-trichloroethane in paints by direct injection into a gas chromatograph. Also, an equation was added to the procedure for calculating the weight content of nonexempt volatile matter for coatings containing exempt solvents.

C. Requirements for the determining the final weight of oven dried samples were simplified. Two respondents noted that allowing the aluminum pans to cool to room temperature in a desiccator and then weighing them is an adequate procedure. No more precision is gained by weighing to a constant weight for 6 hours. The Agency agrees and has deleted the 6-hour constant weight requirement.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they may effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method revisions and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

B. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding the regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The RFA specifically requires the completion of an analysis in those instances where small business impacts are possible. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have an impact on small entities because no additional costs will be incurred.

D. Paperwork Reduction Act

This rule does not change any information collection requirements subject to Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Incorporation by reference, Surface coating of metal furniture, Automotive and light duty truck surface coating operations, Pressure sensitive tape and label surface coating, Industrial surface coating: Large appliances, Metal coil surface coating, Beverage can surface coating industry, Flexible vinyl and urethane coating and printing, Plastic parts for business machine coatings industry, and Reporting and recordkeeping requirements. No industries other than those already referencing the current method, will be affected.

Dated: June 29, 1992.

William K. Reilly,

Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. In § 60.17 of subpart A, by amending paragraph (a)(31) by removing the words ", par. 2.2." and adding a period, and by adding paragraph (a)(62) to read as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(62) ASTM D4457–85 Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph, IBR approved for appendix A, Method 24.

* * * * *

Appendix A [Amended]

3. In Method 24 of appendix A, the heading is revised; sections 3.1, 3.2, 3.3, and 3.4 are redesignated as sections 3.2, 3.3, 3.4, and 3.5, respectively; section 5.2 is revised; and new sections 2.5, 3.1, 3.6, 3.7, 3.7.1, 3.7.2, 3.7.2.1, 3.7.2.2, 3.7.2.3, 3.7.2.4 and 5.1.3 are added, to read as follows:

Method 24—Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings

* * * * *

2.5 ASTM D4457–85 Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph (incorporated by reference—see § 60.17).

* * * * *

3.1 Multicomponent Coatings. Multicomponent coatings are coatings that are packaged in two or more parts, which are combined before application. Upon combination a coreactant from one part of the coating chemically reacts, at ambient conditions, with a coreactant from another part of the coating. To determine the total volatile content, water content, and density of multicomponent coatings, follow the procedures in section 3.7. For all other coatings analyze as follows:

* * * * *

3.6 Exempt Solvent Content. Determine the weight fraction of exempt solvents (W_E) by using ASTM Method D4457–85 (incorporated by reference—see § 60.17). Run a duplicate set of determinations and record the arithmetic average (W_E)

Note: Exempt solvents are defined as those solvents listed in 57 FR 3941, February 3, 1992. Dichloromethane and 1,1,1-trichloroethane are listed exempt solvents and may be used in coatings.

3.7 To determine the total volatile content, water content, and density of multicomponent coatings, use the following procedures:

3.7.1 Prepare about 100 ml of sample by mixing the components in a storage container, such as a glass jar with a screw top or a metal can with a cap. The storage container should be just large enough to hold the mixture. Combine the components (by weight or volume) in the ratio recommended by the manufacturer. Tightly close the container between additions and during mixing to prevent loss of volatile materials. However, most manufacturers mixing instructions are by volume. Because of possible error caused by expansion of the liquid when measuring the volume, it is recommended that the components be combined by weight. When weight is used to combine the components and the manufacturer's recommended ratio is by volume, the density must be determined by section 3.4.

3.7.2 Immediately after mixing, take aliquots from this 100 ml sample for determination of the total volatile content, water content, and density. To determine water content, follow section 3.3. To determine density, follow section 3.4. To determine total volatile content, use the apparatus and reagents described in ASTM D2369–81, sections 3 and 4, respectively (incorporated by reference, and see § 60.17) the following procedures:

3.7.2.1 Weigh and record the weight of an aluminum foil weighing dish. Add 31±1 of suitable solvent as specified in ASTM D2369–81 to the weighing dish. Using a syringe as specified in ASTM D2369–81, weigh to 1 mg, by difference, a sample of coating into the weighing dish. For coatings believed to have a volatile content less than 40 weight percent, a suitable size is 0.3±0.10 g, but for coatings believed to have a volatile content greater than 40 weight percent, a suitable size is 0.5±0.10 g.

Note: If the volatile content determined pursuant to section 5 is not in the range corresponding to the sample size chosen repeat the test with the appropriate sample size. Add the specimen dropwise, shaking (swirling) the dish to disperse the specimen completely in the solvent. If the material forms a lump that cannot be dispersed, discard the specimen and prepare a new one. Similarly, prepare a duplicate. The sample shall stand for a minimum of 1 hour, but no more than 24 hours prior to being oven dried at 110°C±5°C. for 1 hour.

3.7.2.2 Heat the aluminum foil dishes containing the dispersed specimens in the forced draft oven for 60 min at 110±5°C. Caution—provide adequate ventilation, consistent with accepted laboratory practice, to prevent solvent vapors from accumulating to a dangerous level.

3.7.2.3 Remove the dishes from the oven, place immediately in a desiccator, cool to ambient temperature, and weigh to within 1 mg.

3.7.2.4 Run analyses in pairs (duplicate sets) for each coating mixture until the criterion in section 4.3 is met. Calculate W_v following Equation 24–1 and record the arithmetic average.

* * * * *

5.1.3 Coatings Containing Exempt Solvents.

$$W_o = W_v - W_E - W_w \qquad \text{Eq. 24–4}$$

where:

W_E = weight fraction of exempt solvents, g/g.

5.2 Weight Fraction Solids.

$$W_s = 1 - W_v \qquad \text{Eq. 25–4}$$

where:

W_s = weight fraction of solids, g/g.

* * * * *

[FR Doc. 92–15966 Filed 7–9–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 86, 124, and 164

[FRL–4151–3]

Changes to Title 40 of the Code of Federal Regulations To Reflect the Role of the New Environmental Appeals Board in Agency Adjudications; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: This document contains corrections to the final regulations that were published Thursday, February 13, 1992, at 57 FR 5320. The regulations relate to the role of the Environmental Appeals Board in Agency adjudications.

EFFECTIVE DATE: July 10, 1992.

FOR FURTHER INFORMATION CONTACT: James W. Black, Administrator's Office (A–101), 401 M Street SW., Washington, DC 20460, (202) 260–4076.

SUPPLEMENTARY INFORMATION: As published, the regulations contain minor typographical errors that might cause confusion and therefore need to be corrected.

List of Subjects

40 CFR Part 86

Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 164

Administrative practice and procedure, Pesticides and pests.

Edward E. Reich,

Environmental Appeals Judge.

Accordingly, the publication on February 13, 1992 is corrected as follows:

Correction of Publication

§ 86.1015 [Corrected]

Paragraph 1. On page 5333, in the first column, amendment 5, in the amendatory language and in the section heading marked "§ 86.1015–84 Treatment of confidential information" the section number is corrected to read "§ 86.1015."

§ 124.78 [Corrected]

Paragraph 2. On page 5336, in the first column, amendment 7, in the section heading "§ 124.75 Ex parte communications" the numeral "5" in the section number is corrected to read "8".

§ 164.2 [Corrected]

Paragraph 3. On page 5342, in the first column, the amendatory language for amendment 2 is corrected to read as follows:

2. Section 164.2 is amended by revising paragraph (c), redesignating paragraphs (g) through (r) as paragraphs (h) through (s) and by adding a new paragraph (g) to read as follows:

[FR Doc. 92–15860 Filed 7–9–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[EPA/OSW–FRL–4151–2]

RIN 2050–AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic; Corrections

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Final rule; corrections.

SUMMARY: On March 29, 1990, the Environmental Protection Agency (EPA) promulgated a rule (55 FR 11798) to revise the existing toxicity characteristics (TC) used to identify certain wastes defined as hazardous; these wastes are regulated under subtitle C of the Resource Conservation and Recovery Act (RCRA) due to their potential to leach significant concentrations of specific toxic constituents. In the preamble, the exclusion from subtitle C regulation for arsenical-treated wood and wood products was revised inappropriately. This rule corrects that revision. Today's rule also deletes two additional references in the Code of Federal Regulations (CFR) to the Extraction Procedure (EP) Toxicity Characteristic and replaces them with references to the TC.

EFFECTIVE DATE: The revision is effective July 10, 1992.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (202) 260–3000 in the Washington, DC metropolitan area. For information on specific aspects of this notice, contact Dave Topping, Waste Identification Branch, Office of Solid Waste (OS–332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7737.

SUPPLEMENTARY INFORMATION:

A. Background

On March 29, 1990 (55 FR 11798), EPA promulgated a rule to revise the existing toxicity characteristics used to identify certain wastes defined as hazardous; these waste are regulated under subtitle C of RCRA. This rule broadened the scope of the hazardous waste regulatory program and fulfilled specific statutory mandates under the Hazardous and Solid Waste Amendments of 1984. The existing Extraction Procedure was replaced by the Toxicity Characteristic Leaching Procedure (TCLP), and additional constituents were added to the list that could cause a waste to be hazardous under the toxicity characteristic. Technical corrections to this rule were published on June 29, 1990 (55 FR 26986), August 2, 1990 (55 FR 31387), and September 27, 1990 (55 FR 39409).

B. Arsenical-Treated Wood

Today's rule corrects an error made at the time of promulgation of the final Toxicity Characteristic (TC) rule. The 1990 rule amended the preexisting exclusion from the characteristic of EP Toxicity to arsenical-treated wood and wood products. Previously, 40 CFR 261.4(b)(9) excluded from the definition of hazardous waste those discarded arsenical-treated wood or wood products that failed the test for EP toxicity characteristic (EPTC) and were not hazardous for any other reason, if the waste was generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

When the TC was promulgated, EPA revised that provision to reflect the new characteristics. However, the Agency unintentionally narrowed the scope of the exclusion by rewording the provision so that only arsenical-treated wood and wood products that failed the TC "solely for arsenic" would be excluded. Therefore, arsenical-treated wood and wood products that failed the TC for other EP constituents (e.g., chromium) would not become regulated as hazardous waste. However, EPA had not intended to change the scope of the arsenical-treated wood exclusion. As noted in the preamble (55 FR 11805), EPA had intended only to replace references to the EPTC with the TC. Today's rule, therefore, corrects the arsenical-treated wood and wood products exclusion by excluding these materials from RCRA subtitle C if they exhibit the TC for any of the EP constituents but are not hazardous for any other reason and are used for their intended purpose.

C. Other Technical Corrections

Today's rule also corrects the regulatory language in 40 CFR 261.4(b)(6)(ii) and 265.301(d)(1) by deleting references to the Extraction Procedure (EP) Toxicity Characteristic and by correctly referencing the TC. 40 CFR 261.4(b)(6)(ii) contains the list of specific chromium bearing wastes that are not hazardous wastes if they do not exhibit the TC or other characteristics of hazardous waste. Also, the technical correction in 40 CFR 265.301(d)(1) applies to the double liner design requirements for landfills at interim status facilities. This correction makes the requirements identical to those for permitted facilities, as found in 40 CFR 264.301(e)(1).

D. Rulemaking Procedures

Because the revisions in this notice correct inadvertent errors or omissions from the 1990 TC rule and are not substantive changes in the scope or content of the affected provisions, public notice and comment on these revisions is necessary. *See* 5 U.S.C. 553(b)(3)(B). For the same reasons, an immediate effective date is appropriate. 5 U.S.C. 553(d).

Richard J. Guimond,

Deputy Assistant Administrator, Solid Waste and Emergency Response.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Region 5, notified Robert P. Miller, Chief, Air Quality Division, MDNR, of USEPA's approval of Michigan's request on August 18, 1992.

The USEPA has determined that this change to the ozone monitoring season in Michigan complies with all applicable requirements of the Clean Air Act and USEPA policy and regulations concerning such revisions. Due to the minor nature of this revision, USEPA concluded that conducting notice and comment rulemaking prior to approving the revision would have been "unnecessary and contrary to the public interest," and hence was not required by the Administrative Procedure Act, 5 U.S.C. 553(b). This action became final and effective on August 18, 1992, the date of USEPA approval of the States's request.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 State Implementation Plan (SIP) revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1992. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 58

Air pollution control, Intergovernmental relations.

Dated: July 28, 1992.

Robert Springer,

Acting Regional Administrator.

Title 40, part 58 of the Code of Federal Regulations is being amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7613, 7619.

Appendix D—[Amended]

2. In Appendix D, in the table in section 2.5, the entry for Michigan is revised to read as follows:

OZONE MONITORING SEASON BY STATE

State	Begin month	End month
Michigan	April	September

[FR Doc. 92–23481 Filed 9–25–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[AD–FRL–3482–1]

RIN 2060–AC67

Standards of Performance for New Stationary Sources; Calciners and Dryers in Mineral Industries

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Standards of performance for calciners and dryers in mineral industries were proposed in the Federal Register on April 23, 1986. This action promulgates standards of performance for calciners and dryers in the mineral industries. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that calciners and dryers in the mineral industries cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, or reconstructed calciners and dryers to achieve emission levels that reflect the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

DATES: *Effective Date.* September 28, 1992.

Judicial Review. Under section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard (NSPS) is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Calciners and Dryers in Mineral Industries—Background Information for the Promulgated Standards," EPA 450/3–85–025b. The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to comments; (2) a summary of the changes made to the regulation since proposal; and (3) the final Environmental Impact Statement which summarizes the impacts of the standards.

Docket. A docket, number A–82–39, containing information considered by EPA in development of the promulgated standards is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section (LE–131), Waterside Mall, room M1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Herring, telephone (919) 541–5358, concerning regulatory decisions; Mr. Bill Neuffer, telephone (919) 541–5435, concerning technical aspects of the industry and control technologies. The address for the above contacts is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. The Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> • • • application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (section 111(a)(1)).

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The promulgated standards apply to new, modified, and reconstructed calciners and dryers at plants that process or produce any of the following minerals or their concentrates: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite.

The affected facility for mineral processing plants in each of the industries listed above would be each

new, modified or reconstructed calciner or dryer. The types of dryers to which the standards apply include: rotary (direct), rotary (indirect), fluid bed, vibrating grate, flash, and spray dryers. The types of calciners to which the standards apply include: Rotary, flash, and kettle calciners; multiple hearth furnaces; and expansion furnaces.

The following processes and process units used at mineral processing plants would not be regulated under this NSPS: Vertical shaft kilns in the magnesium compounds industry; the chlorination-oxidation process in the titanium dioxide industry; coating kilns, mixers, and aerators in the roofing granules industry; and tunnel kilns, tunnel dryers, apron dryers, and grinding equipment that also dries the process material used in any of the 17 mineral industries. In addition, for the brick and related clay products industry, only the calcining and drying of raw materials prior to firing of the brick are covered because these are the only major sources of air pollution in that industry that fall under this generic source category.

The standards are based on emission levels achievable using well-designed and operated fabric filters, wet scrubbers or electrostatic precipitators (ESP's). All of these systems are considered BDT for controlling emissions from calciners and dryers in this source category, depending on the type of calciner and dryer and mineral industry. The promulgated standards limit stack emissions of particulate matter from affected facilities. The standards for stack emissions limit the concentration of particulate matter to 0.092 gram per dry standard cubic meter (g/dscm) [0.040 grain per dry standard cubic foot (gr/dscf)] for calciners and for calciners and dryers installed in series. For dryers, the concentration of particulate matter is limited to 0.057 g/dscm (0.025 gr/dscf).

Stack emissions would also be limited to 10 percent opacity for process units controlled with dry control devices. The visible emissions standard would not apply to affected facilities that use wet scrubbers to control emissions. Instead, monitoring and reporting of the operating parameters of wet scrubbers (pressure drop and liquid flow rate) would be required to indicate that the control device is properly operated and maintained on a routine basis.

When a dry control device (e.g., baghouse or ESP) is used to comply with the calciner or dryer mass emission standard, the owners or operators of the units are required to install a Continuous Opacity Monitoring System (COMS), except as noted below.

Owners or operators of ball clay vibrating grate dryers, bentonite rotary dryers, diatomite flash dryers, diatomite rotary calciners, feldspar rotary dryers, fire clay rotary dryers, industrial sand fluid bed dryers, kaolin rotary calciners, perlite rotary dryers, roofing granules fluid bed dryers, roofing granules rotary dryers, talc rotary calciners, titanium dioxide fluid bed dryers, titanium dioxide spray dryers, vermiculite fluid bed dryers, or vermiculite rotary dryers who use a dry control device may have a certified visible emissions observer measure and record the opacity of the visible emissions daily in lieu of using a COMS. Owners or operators of ball clay rotary dryers, diatomite rotary dryers, feldspar fluid bed dryers, fuller's earth rotary dryers, gypsum rotary dryers, gypsum flash calciners, gypsum kettle calciners, industrial sand rotary dryers, kaolin rotary dryers, kaolin multiple hearth furnaces, perlite expansion furnaces, talc flash dryers, talc rotary dryers, titanium dioxide direct or indirect rotary dryers or vermiculite expansion furnaces who use a dry control device are exempt from the monitoring requirements.

When a wet scrubber is used to comply with the calciner or dryer mass emission standard, the owner or operator would be required to install, calibrate, maintain, and operate monitoring devices that continuously measure and record the pressure loss of the gas stream through the scrubber and the scrubbing liquid flow rate to the scrubber. The pressure loss monitoring device must be certified by the manufacturer to be accurate within 1 inch of water column (in. W.C.) gauge pressure. The liquid flow rate monitoring device must be certified by the manufacturer to be accurate within 5 percent of design scrubbing liquid flow rate.

Method 5 of appendix A, 40 CFR part 60, will be used to determine compliance with the stack concentration standard. Method 9 of Appendix A and the procedures in 40 CFR 60.11 will be used to measure the opacity of stack emissions from dry control devices.

II. Environmental Impacts

The standards will reduce projected nationwide particulate emissions from new, modified, and reconstructed calciners and dryers in the mineral industries in the fifth year following promulgation of the standards by 7,900 megagrams (Mg) (8,800 tons) compared to emissions allowed under typical State process weight regulations. This represents a 78 percent reduction in particulate matter emissions from these sources.

The nationwide increase in solid waste (as a sludge containing 70 percent moisture) in the fifth year would be 7,500 Mg (8,300 tons) compared to the State Implementation Plan (SIP) level. The only solid waste impacts would be from the solids in the sludge produced by wet scrubbers. Typically, a particulate-contaminated water stream is pumped to a settling pond on the site. The solids settle in the pond, and the water is recirculated to the scrubber. When solids fill the pond, the pond could be dredged and the solids could be landfilled and a new pond could be constructed. The wastes from wet scrubbers used to control emissions from dryers and calciners are not classified as hazardous wastes under the regulations adopted to implement the Resource Conservation and Recovery Act. The standards would result in negligible adverse water, noise and radiation impacts.

III. Energy Impacts

In the fifth year after the NSPS would become applicable, the maximum increase in energy consumption for mineral calciner and dryer control devices would be 17,000 megawatt-hours (MWh) compared to the SIP level of control for typical facilities. This incremental energy requirement of the NSPS to operate control equipment would be less than 1 percent of the energy demands to operate the calciner and dryer process units.

IV. Economic Impacts

Based on industry growth projections it is estimated that 62 new claciners and 32 new dryers will be installed in the first 5 years that the NSPS is in effect. In addition, during this same time period it is expected that 60 calciners and 44 dryers will be replaced at existing facilities at the end of their useful lives.

The total nationwide incremental capital cost of pollution control equipment in the fifth year would range from $2.2 to $3.0 million under the standards compared to the SIP level. The variation in costs is due to those process units for which either a fabric filter or a wet scrubber could be installed. If only wet scrubbers were installed, the capital cost of installation would be lower than if only fabric filters were installed. For the 104 new process units that are projected in the first 5 years of the NSPS to replace existing units at the end of their useful lives, capital control device costs would increase over baseline levels in 23 percent of the cases as a result of upgrading the design of the control devices (e.g., increased pressure drop

a wet scrubber). In 11 percent of the cases, the existing wet scrubber control devices are operated at pressure drops that achieve both the SIP and NSPS emission limits and, therefore, no incremental capital costs would be incurred as a result of the NSPS. In 66 percent of the cases, fabric filters installed to meet SIP emission limits would achieve the NSPS emission limit with improved operation and maintenance. Therefore, there is no capital cost increase for fabric filter control devices.

The total nationwide incremental annualized cost of pollution control equipment in the fifth year would range from $0.7 to $1.0 million. If only wet scrubbers were installed where an option exists, the annualized costs would be higher than if only fabric filters were installed because of the additional energy costs associated with operating a scrubber and the product recovery credits associated with operating a fabric filter.

The annualized control device costs for the 104 projected process units would increase as a result of improved operation and maintenance of fabric filters (66 percent of the cases) or as a result of upgrading the design of a wet scrubber or ESP (23 percent of the cases). As with the capital costs, annualized control costs would not change in 11 percent of the cases where wet scrubbers achieve both the SIP and NSPS emission limits.

The projected growth and profitability of the 17 mineral industries are not expected to be affected adversely by implementation of the NSPS. For 15 of the 17 industries included in the analysis, the product price increases that would be required as a result of the NSPS would typically be less than 0.5 percent. Typical size facilities in the fire clay and lightweight aggregate industries would experience product price increases of 1.09 and 1.75 percent, respectively, as a result of implementation of the NSPS.

A detailed discussion of the costs and economic impacts associated with the NSPS is contained in the preamble (51 FR 15438; April 23, 1986) and BID (EPA 450/3-85-025a) for the proposed standards.

V. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the Federal Register (50 FR 31025; July 31, 1985) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards for calciners and dryers in mineral industries, recommended for proposal. The meeting was held on September 17, 1985. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The proposed standards were published in the Federal Register on April 23, 1986 (51 FR 15438).

The preamble to the proposed standards discussed the availability of the BID, "Calciners and Dryers in Mineral Industries—Background Information for Proposed Standards" (EPA-450/3-85-025a), which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on June 9, 1986, at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed standards. The public comment period was from April 23, 1986, to July 7, 1986.

Fourteen comment letters were received and 12 interested parties testified at the public hearing concerning issues relative to the proposed standards. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

VI. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry, trade associations, and State air pollution control agencies. A detailed discussion of these comments and responses can be found in the BID, which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions which have been made to the standards between proposal and promulgation.

In response to the public comments and as a result of EPA's reevaluation, several changes have been made to the standards since proposal. The definition of "mineral processing plant" in the standards was revised to provide that a new, modified, or reconstructed dryer or calciner which processes a mixture of minerals is covered by the standards if the majority of the material being processed (greater than 50 percent) is any of the following minerals or a combination of these minerals: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite.

Also, changes have been made with regard to the opacity monitoring requirements. The owners or operators of certain units that use a dry control device to comply with the calciner or dryer mass emissions standard are required to install a COMS, except as discussed previously under Section I of this preamble. In addition, certain calciners and dryers as listed in Section I and in the regulation are exempt from the monitoring requirement.

A technical correction was made to the final standards to clarify the monitoring and recordkeeping requirements for facilities which are controlled by wet scrubbers. In addition, the semiannual recalibration requirements for monitoring devices in § 60.734, Monitoring of emissions and operations, have been deleted. The only requirement for COM's intended for operation and maintenance are daily zero and span checks.

In § 60.735, paragraph (b) was added to clarify that each owner or operator who uses a wet scrubber to comply with the standards must record daily the arithmetic average over a 2-hour period of both the change in pressure of the gas stream across the scrubber and the scrubbing liquid flowrate.

The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: Need for Regulation of Source Category, Control Technology, Economic Impact, Selection of Emission Limits, and Monitoring Requirements.

A. Need for Regulation of Source Category

Several commenters questioned EPA's determination that calciners and dryers in mineral industries are sources of emissions that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health and welfare.

There are six source categories currently listed on the NSPS priority list (August 21, 1979; 44 FR 49225; revised January 8, 1982; 47 FR 950) that include all 17 mineral industries being covered by this NSPS. Number 13 on the priority list is Nonmetallic Mineral Processing, which includes sand and gravel, clay (ball clay, bentonite, fuller's earth, kaolin), talc, feldspar, diatomite, roofing granules, and vermiculite. Number 14 on the priority list, Metallic Mineral

Processing, includes aluminum, magnesium compounds, and titanium dioxide. The lightweight aggregate (LWA) industry (clay, shale, slate) is Number 32 on the NSPS priority list. Numbers 34, 46, and 54 on the list are gypsum, brick and related clay products (fire clay), and perlite, respectively. The priority list was promulgated under Section 111(f) of the Clean Air Act. Source categories were included on the list if, in the Administrator's judgment, they cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. Source categories were ranked in order of priority according to (1) quantity of emissions; (2) potential impact on health and welfare; and (3) mobility and competitive nature of the source category.

These industries were included on the NSPS priority list because of their emissions of particulate matter. Particulate matter is a criteria pollutant which has been determined to be an air pollutant that may endanger public health and welfare and for which a national ambient air quality standard (NAAQS) has been promulgated (40 CFR 50.6 and 50.7). Fuller's earth, alumina, ball clay, bentonite, fire clay, kaolin, magnesite, and other dusts emitted by the industries covered by the NSPS are types of particulate matter. The basis for the Administrator's determination that particulate emissions may endanger public health and welfare is presented in the rulemaking for setting and revising the NAAQS for particulate matter (52 FR 24634; July 1, 1987).

The main purpose of standards of performance is to require new sources, wherever located, to reduce emissions to the level achievable by the best technological system of continuous emission reduction considering the cost of achieving such emission reduction, any nonair quality health and environmental impact, and energy requirements (BDT) [Section 111(a)(1)]. Congress recognized that establishing such standards would minimize increases in air pollution from new sources, thereby improving air quality as the nation's industrial base is replaced over the long term. An NSPS thereby serves as a distinct means of achieving the Act's goals, supplementing the role played by the requirements, including Reasonably Available Control Technology requirements for existing and new sources within State implementation plans developed for the purpose of attaining the NAAQS.

The existence of other environmental regulations was considered during selection of BDT, but their existence does not lead the EPA to conclude that standards reflecting better control technology cannot be applied at reasonable costs.

The EPA has considered the emission reductions, costs, and other impacts due to emission controls and has concluded that the controls underlying the standards are BDT. Under Section 111 of the Clean Air Act, EPA is therefore required to promulgate standards of performance that reflect BDT for this category of sources.

B. Control Technology

Several commenters perceived that the proposed standards did not allow for the use of low-energy wet scrubbers because control devices with greater energy consumption are required to achieve the NSPS limits. They felt that energy consumption is an important consideration in the selection of a control device and it is inappropriate to regulate against the use of energy-efficient devices.

The EPA does not necessarily recommend the use of a high pressure drop scrubber or any other emission control technology to attain and maintain compliance with the performance requirements of this standard. Compliance with the pollutant concentration limits of this standard can generally be achieved by application of one of many alternative emission control strategies and, for a specific case, EPA does not require that a particular control device be used.

In several industries, EPA has determined that low energy wet scrubbers (pressure drops less than 6 inches of water gauge) can achieve the standard based on emission test data presented in chapter 4 of the proposal BID. The pressure drops required for scrubbers to meet the standards were based on the most-difficult-to-control case for that particular process unit in each industry. Other process units in that industry that are less difficult to control should be able to comply with this NSPS using lower pressure drops. In all cases, the cost, energy, and economic impacts associated with any increased pressure drop were evaluated and determined to be reasonable by EPA.

C. Economic Impact

Seven commenters stated that the LWA industry is declining due to rising energy costs, environmental control costs, and impacts of product substitutes, in particular, pumice. Two of these commenters felt that the LWA industry would be destroyed by the proposed standards. One commenter stated that, due to the additional environmental control costs, many companies would continue to operate old, existing sources and eventually the industry would die of old age and lack of reinvestment. The commenters suggested that the LWA industry either be dropped because of economic reasons or that an alternative control level equal to current State regulations be selected.

One of the commenters stated that the incremental capital cost for a lightweight aggregate kiln would be 10 to 20 times higher than the cost for other industries based on data in the proposal BID. Also, the commenter calculated the annual incremental cost for this industry to be 4–9 times that estimated by EPA for other industries. He also stated that the costs and product price increases were underestimated by EPA and that these costs and price increases would be overly burdensome on the LWA industry considering that this industry accounted for only 5.8 percent of the emission reduction from this NSPS.

Another commenter believed that this NSPS would have a doubling effect in terms of costs on the LWA industry as the standards also apply to the refractory industry whose products are used by the LWA industry. This commenter also stated that this NSPS would have a similar cumulative economic impact on the fire clay industry as that industry uses both dryers and calciners. He also stated that other regulated minerals are used in the refractory products and, therefore, price increases could approach 3–4 percent and create a major burden on the refractory industry.

The EPA believes the costs and economic impacts associated with this NSPS are reasonable and would not have the disruptive impact on the LWA and refractory industries described by the commenters. Many factors such as obsolete machinery; newer, more efficient and competitive plants; changing market demands; and better substitute products influence a corporate decision as to whether it is prudent to invest in new equipment or to continue to operate old, existing equipment until operation is no longer possible. The product price increases attributable to the NSPS are quite small—less than 2 percent for all industries. It is possible that various forces external to the costs of NSPS would preclude investment in newer plants and equipment. The actual cost, however, resulting from this NSPS is very small, and it is unlikely that investment plans would be made based on a cost so small.

With regard to pumice, there is no doubt that pumice is a substitute for LWA, although in many cases pumice is an inferior substitute. The LWA industry has a far larger share of the total market (LWA plus pumice) than pumice. Pumice's share of the market has ranged from 9 to 19 percent of the total market, an average of 13 percent. The current levels of production of LWA are down from past levels. However, the losses in LWA production are due to other factors and not due to gains by pumice as pumice's recent share of the total market is similar to its historical position. Additionally, pumice production from domestic mines has declined, as well as pumice imports, signalling a downturn in the total market for both products. The EPA does not believe that the cost of this NSPS will lead to a competitive disadvantage for the LWA industry.

In regard to the incremental cost of an NSPS, it is important to establish a common basis. One basis used by EPA is the ratio of the incremental cost of the NSPS to the megagrams (Mg) of reduction in particulate emissions. The range of incremental cost using this approach for the LWA industry, depending on the type and size of the affected facility, is $240 to $1,100/Mg. This is within the range of incremental cost per megagram ratios determined for the other industries affected by the NSPS.

Another measure of the effect of incremental cost relates incremental cost to the selling price of the product. Based on a product price of $22/Mg for the LWA industry and allowing for the increased costs that the commenter felt EPA missed, the percent product price increase including electrical costs would be 0.4 to 2.4 percent depending on the type of control device. These impacts were considered reasonable and not burdensome by EPA.

Additive effects of the NSPS are possible where an industry utilizes both calciners and dryers. In the case of fire clay production, cumulative effects could be as high as 2 percent; although effects would typically be 1.6 percent using the least costly control device for a rotary dryer. The 2 percent estimate is based on the smallest plant size and resultant worst case.

In estimating the additive effects for refractory products manufacturing, the commenter simply added the price increase for LWA and the price increase for fire clay. This is an overstatement because refractories are only a portion of the cost components for LWA. In order to calculate the actual effect, one needs to know the percent of the LWA plant's total expenses that is attributable to refractory products. This can then be used to calculate how much the plant's total expenses will increase as a result of any increase in the price for refractory products. In any case, the increase will be less than the 3 to 4 percent estimated by the commenter. Therefore, EPA does not believe the NSPS will have a doubling effect in terms of cost on the LWA industry.

D. Selection of Emission Limits

One commenter recommended limiting emissions from both calciners and dryers to 0.092 g/dscm (0.040 gr/dscf). The commenter felt the proposed limit for dryers of 0.057 g/dscm would preclude the use of low energy scrubbers. Two commenters questioned the fairness and rationale of having a more stringent standard (0.057 g/dscm) for dryers alone compared with the standard (0.092 g/dscm) for dryers and calciners in series. One of the commenters stated that it did not seem equitable because producers without calciners but with dryers would be bound by a more stringent standard.

The NSPS emission limit for calciners and for dryers and calciners in series (0.092 g/dscm) is different than for dryers alone (0.057 g/dscm) because EPA's emission test data support these limits. As shown in chapter 4 of the proposal BID, all emission test data for dryers were less than 0.057 g/dscm except for four dryers controlled by wet scrubbers and one controlled by a baghouse which was not operating properly as there was leakage through a closed bypass damper. By using EPA's wet scrubber model, increases in pressure drop were calculated to ascertain what is required to achieve 0.057 g/dscm. All emission test data for calciners were less than 0.092 g/dscm except for three calciners controlled by wet scrubbers. Again, EPA's wet scrubber model was used to determine the pressure drop required to achieve 0.092 g/dscm. Also, emission test results for a flash dryer/rotary calciner installed in series were 0.092 g/dscm.

These limits are based on EPA's judgment of the technology which represents BDT considering the cost, any nonair quality health, environmental impact, and energy requirements. In this case, BDT is a baghouse or high energy scrubber, although in some instances low energy scrubbers may achieve comparable performance. A standard based on low energy scrubbers for all sources covered by this NSPS would not reflect BDT or reduce emissions to a level achievable by BDT.

E. Monitoring Requirements

Several commenters felt that the reasons used by EPA to justify continuous opacity monitoring and the associated recordkeeping and reporting are inadequate. Two of the commenters stated that broken bags in a collector are apparent without the need for a COMS and the increased capital and operating costs associated with it are not commensurate with the benefits. They felt that this requirement should apply only to major sources of pollution. Another commenter stated that his company's experience with these monitors has shown them to be expensive, difficult to install, very difficult to maintain, and inaccurate. He recommended dropping the requirements.

One commenter stated that the measured moisture content with the flue gases from their dryers vary from 7 to 22 percent by volume and during cold weather, plume moisture occurs with little or no plume stack separation. In addition, he stated that condensed water has appeared on the stack exterior in the vicinity of the sample ports at his plant. He felt these conditions were not conducive to in-stack opacity monitoring devices and, therefore, it would be more reasonable to require a certified observer to record opacities on a periodic basis. Another commenter felt that a COMS for an ESP controlling a dryer processing bentonite would continuously yield erroneous readings due to dripping water, falling clay-laden films, and clay film bridging. He cited problems his company has experienced with a bentonite dryer controlled by a dry ESP.

In regard to the commenters' concerns about the opacity monitoring requirements and the use of COMS's, section 114 of the CAA authorizes EPA to require such monitoring as is appropriate for enforcing NSPS. Also, Section 302(1) of the CAA defines "standards of performance" to include "any requirement relating to the operation and maintenance of a source to assure continuous emission reduction." The EPA's experience with control devices shows that regular maintenance, both remedial and preventive, greatly enhances control equipment efficiency. As stated in the preamble to the proposed standards (51 FR 15438; April 23, 1986), opacity monitoring can indicate when fabric filter bags are torn loose and when ESP electrodes are damaged or malfunctioning. The EPA's long-time experience with COMS's is that the devices operate accurately and with

minimum downtime with regular and reasonable maintenance.

The EPA agrees with the commenters that a sudden increase in emissions resulting from either broken bags in a baghouse or a sudden failure of a baghouse or ESP would be immediately apparent and require attention by the source operator. However, the purpose of a COMS or other monitoring alternatives such as daily visible emissions observations is to alert industry and enforcement personnel of potential violations of the mass emission standard and to ensure the proper operation and maintenance of particulate control equipment on a continuous basis, i.e., to alert the operator to more subtle and gradual deterioration of the control device efficiency that occurs over time and results in increased emissions unless corrected. The emission reduction performance of air pollution control equipment is dependent upon the proper operation of many components of the control systems. While certain parameters can provide information on the status of certain key components, it is generally not possible to determine overall control device performance by monitoring parameters other than emissions. Without COMS's, operators have essentially no tools that they can use to monitor the continued performance of ESP's or fabric filter systems or to ensure that necessary maintenance is performed. The broken rapper welds and bag deterioration are examples of items that affect emissions and that cannot be evaluated or detected except with COMS's. The reporting of excursions as recorded by COMS's also helps State and local enforcement programs identify sources which are having repeated maintenance problems with their control devices. Since plant inspections and testing are infrequent, gradual deterioration will not be detected until a major failure occurs unless opacity monitoring is required.

The benefits of using a COMS are documented in a recent study conducted at Portland cement plants (Docket A-82-39, Item II-A-130). The study concludes that COMS's installed on control equipment at these plants contributed significantly to lower emissions. The emission reduction benefits are derived from: (1) Indicating when repair and maintenance of control equipment are needed, (2) signalling the need for a change in operating and maintenance practices for the process and the air pollution control device, and (3) quantifying emission reductions after the installation of a COMS. Factors which contributed to the lower emissions from the facilities were: (1) An increased sensitivity of the plant operating personnel that changes in process operating conditions and flue gas characteristics affect stack emissions; and (2) the awareness by plant operators that increased stack opacities below the opacity limit can be indications of excess particulate emissions.

Nevertheless, as the amount of emissions from an individual source decreases, the benefits of monitoring also decrease and at some point it is no longer reasonable to require a COMS or other monitoring alternative. Therefore, as a result of the comments received, EPA evaluated four alternative monitoring requirements: The use of a COMS; the reading of visible emissions daily or weekly by a certified visible emissions observer; and no monitoring requirements (Docket No. A-82-39; Item IV-B-1).

As a result of the analysis, the Administrator has determined that it is reasonable to require the installation of COMS's on all dryers and calciners of a certain type within an industry where the typical size unit of that type has potential emissions after NSPS control equal to or greater than 22.7 Mg/yr (25 tons/yr). For typical size units with emissions less than 22.7 Mg/yr (25 tons/yr) but greater than or equal to 10.0 Mg/yr (11 tons/yr), the Administrator has determined that owners or operators may perform daily visible emission observations in lieu of installing a COMS. The Administrator has also determined that typical units with emissions less than 10.0 Mg/yr (11 tons/yr) should be exempt from any monitoring requirements. Because of the variation in emissions after NSPS control for each size and type of calciner or dryer and for each industry, the monitoring requirements are based on the typical size of a particular type of calciner or dryer in each industry. The specific monitoring requirements for each type of dryer or calciner in each industry are presented in Section 60.734 of the final standards.

The following discussion summarizes the basis for the specific monitoring requirements for each type of dryer or calciner. The EPA used 22.7 Mg/yr (25 tons/yr) as the cutoff level for particulate matter (PM) emissions in determining which facilities would be required to install COMS's if they use dry control devices in the prevention of significant deterioration (PSD) rules. EPA set *de minimis* levels of emissions for various pollutants. For PM emissions, the level was selected by evaluating the potential effect of different emissions levels on an area's air quality and how that related to the National Ambient Air Quality Standard (NAAQS) for PM. The analysis was based on a source's potential to emit after application of all appropriate Federal regulations such as NSPS. The significance level for PM emissions was set at 22.7 Mg/yr (25 tons/yr). Therefore, the Administrator has determined that it is beneficial and reasonable to require the installation of COMS's on all calciners and dryers of a certain type within an industry where the typical size unit of that type has emissions after NSPS control equal to or greater than 22.7 Mg/yr (25 tons/yr).

As stated previously, however, as the amount of emissions from an individual source decreases, the expected benefits of monitoring decrease and at some point it is no longer reasonable to require a COMS or other monitoring alternative. As a result, for calciners and dryers with emissions of less than 22.7 Mg/yr (25 tons/yr) after NSPS controls, the EPA assessed alternatives other than the installation of a COMS. These alternatives included daily or weekly visible emissions observations and no monitoring requirements. In assessing the reasonableness of performing daily versus weekly visible emission observations, it was determined that the cost of either one would be similar but would not deliver the same benefits. In both cases, employees of the affected plant would need to be formally certified as opacity readers twice per year. The costs associated with the certification would be incurred regardless of whether a daily or weekly monitoring requirement was imposed. The other costs associated with these alternatives are the annual cost of performing the observations and recording the results. The annual cost of weekly readings of visible emissions would be reduced somewhat, but because of the fixed cost of certification, would cost approximately 40 percent of the cost of doing daily observations. Moreover, a daily observation program would be more effective at identifying gradual deterioration of the control device efficiency and allowing a plant operator time to correct the problem prior to a complete failure of the device. A weekly observation program would not identify the gradual deterioration of the control device as quickly and, in some cases, a failure of the control device could occur between two weekly observations. Because requiring daily observations would yield substantially greater benefits than weekly observations and the cost difference

was considered reasonable, the alternative of weekly observations was considered inferior for the sources with less than 22.7 Mg/yr (25 tons/yr) of emissions after NSPS control. Therefore, for typical size units with emissions less than 22.7 Mg/yr (25 tons/yr), but greater than or equal to 10.0 Mg/yr (11 tons/yr), the regulation has been revised to allow the owner or operator to perform daily visible emission observations in lieu of installing a COMS.

On the other hand, the Administrator has determined that typical size units with emissions less than 10.0 Mg/yr (11 tons/yr) should be exempt from any monitoring requirements. In making this determination, consideration was given to the size of the source in terms of the emissions after NSPS control is applied. In addition, the benefits associated with monitoring, such as identifying sources that are having control equipment problems for the appropriate enforcement agency so corrective action can be taken, were considered. For very small sources with small control devices, the benefits associated with a COMS or daily visible emission observations, in terms of reducing excess emissions, are smaller in comparison to larger sources. The cost of daily visible emission observations as a percent of the annualized cost of operating the control equipment was also considered. For these reasons, typical size units with emission less than 10.0 Mg/yr (11 tons/yr) are exempt from any monitoring requirements.

In regard to concerns raised about moisture on the exterior of a stack interfering with the operation or accuracy of a COMS, EPA does not believe this condition will have any effect on the measurement of opacity in the stack and the commenter had no data to support this claim. However, if high moisture content in the stack or other situations such as falling clay-laden films or clay-film bridging are interfering with the performance of a COMS, the owner or operator may petition the Administrator to approve an alternative monitoring procedure, requirement, or location according to 40 CFR 60.13(i).

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2063-_____.

The public reporting burden for this collection of information is estimated to average 492 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2063-_____) Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to certain requirements of the Order. The EPA has determined that the regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be major. The total nationwide incremental annualized costs in the fifth year after the standards would go into effect would range from $0.7 to $1.0 million, less than the $100 million established as the first criterion for a major regulation in the Order. The maximum estimated price increase of 1.75 percent associated with the standards would not be considered a "major increase in costs or prices" specified as the second criterion in the Order. The economic analysis of the standard's effect on the industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms which is the third criterion in the Order.

This regulation was submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection in Docket No. A-82-39, at EPA's Air Docket Section listed under the **ADDRESSES** section.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires EPA to consider potentially adverse impacts of regulations on small business "entities." If a preliminary analysis indicates that a regulation would have a significant economic impact on 20 percent or more of small entities, then an RFA must be prepared. The EPA definition of significant effect involves four tests: (1) Prices for small entities rise 5 percent or more, assuming costs are passed on to consumers; or (2) annualized investment costs for pollution control are greater than control costs as a percentage of sales for large entities; or (3) control costs as a percentage of sales for small entities are 10 percent greater than control costs as a percentage of sales for large entities; or (4) the requirements of the regulation are likely to result in closures of small entities.

The Act's definition of "small business" is based on definitions developed by the Small Business Administration (SBA). The SBA's definitions are listed in 13 CFR part 121 by Standard Industrial Classification (SIC) categories. For most of the mineral dryer and calciner industries, the SBA defines a small business as one with 500 or fewer employees (the two exceptions are gypsum and titanium dioxide, each of which is 1,000 employees). Most of the mineral dryer and calciner industries do include small businesses according to the SBA definiton. The regulation would apply to all businesses (small and large) in the 17 industries, and as a result the test of a substantial number of small businesses is met.

Although there are a substantial number of small businesses, the measure of significant effects is not likely to be met. The absolute level of the percent product price increases is quite small for most of the industries, typically about 0.5 percent or less. Thus, the first test is never triggered. Neither are the second or fourth tests triggered. The third test is occasionally triggered, but the absolute sizes of the numbers are so small as to make this test inapplicable. For example, in the diatomite industry, a small flash dryer (4 Mg/h) has control costs as a percentage of sales that are 23 percent higher than

the corresponding percentage for a larger flash dryer (11 Mg/h). But the absolute levels of these two percentages are 0.16 percent and 0.13 percent, and the 23 percent difference between them is virtually meaningless. Thus, because the absolute levels of the percent product price increases are quite small for most of the industries, and because the tests are presented as guidelines, as interpretation of he spirit and purpose of the Act indicates that the industries do not exceed the Act's states. Because these standards impose no adverse economic impacts, Regulatory Flexibility Analysis has not be conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities because the impact of the final rule is not significant.

E. Miscellaneous

The effective date of this regulation is September 28, 1992. Section 111 of the Clean Air Act provides that NSPS or revisions thereof become effective upon promulgation and apply to affected facilities, the construction or modification of which was commenced after the date of proposal, April 23, 1986.

As described in section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that calciners and dryers in use in the mineral processing industries contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any NSPS promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Metallic minerals, Nonmetallic minerals, Reporting and recordkeeping requirements.

Dated: September 19, 1992.

William K. Reilly,

Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By adding a new subpart UUU consisting of §§ 60.730 through 60.737 to read as follows:

Subpart UUU—Standards of Performance for Calciners and Dryers in Mineral Industries

Sec.
60.730 Applicability and designation of affected facility.
60.731 Definitions.
60.732 Standards for particulate matter.
60.733 Reconstruction.
60.734 Monitoring of emissions and operations.
60.735 Recordkeeping and reporting requirements.
60.736 Test methods and procedures.
60.737 Delegation of authority.

Subpart UUU—Standards of Performance for Calciners and Dryers in Mineral Industries

§ 60.730 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each calciner and dryer at a mineral processing plant. Feed and product conveyors are not considered part of the affected facility. For the brick and related clay products industry, only the calcining and drying of raw materials prior to firing of the brick are covered.

(b) An affected facility that is subject to the provisions of subpart LL, Metallic Mineral Processing Plants, is not subject to the provisions of this subpart. Also, the following processes and process units used at mineral processing plants are not subject to the provisions of this subpart: vertical shaft kilns in the magnesium compounds industry; the chlorination-oxidation process in the titanium dioxide industry; coating kilns, mixers, and aerators in the roofing granules industry; and tunnel kilns, tunnel dryers, apron dryers, and grinding equipment that also dries the process material used in any of the 17 mineral industries (as defined in § 60.731, "Mineral processing plant").

(c) The owner or operator of any facility under paragraph (a) of this section that commences construction, modification, or reconstruction after April 23, 1986, is subject to the requirements of this subpart.

§ 60.731 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act and in subpart A of this part.

Calciner means the equipment used to remove combined (chemically bound) water and/or gases from mineral material through direct or indirect heating. This definition includes expansion furnaces and multiple hearth furnaces.

Control device means the air pollution control equipment used to reduce particulate matter emissions released to the atmosphere from one or more affected facilities.

Dryer means the equipment used to remove uncombined (free) water from mineral material through direct or indirect heating.

Installed in series means a calciner and dryer installed such that the exhaust gases from one flow through the other and then the combined exhaust gases are discharged to the atmosphere.

Mineral processing plant means any facility that processes or produces any of the following minerals, their concentrates or any mixture of which the majority (>50 percent) is any of the following minerals or a combination of these minerals: alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite.

§ 60.732 Standards for particulate matter.

Each owner or operator of any affected facility that is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test required by § 60.8 is completed, but not later than 180 days after the initial startup, whichever date comes first. No emissions shall be discharged into the atmosphere from any affected facility that:

(a) Contains particulate matter in excess of 0.092 gram per dry standard cubic meter (g/dscm) [0.040 grain per dry standard cubic foot (gr/dscf)] for

calciners and for calciners and dryers installed in series and in excess of 0.057 g/dscm for dryers; and

(b) Exhibits greater than 10 percent opacity, unless the emissions are discharged from an affected facility using a wet scrubbing control device.

§ 60.733 Reconstruction.

The cost of replacement of equipment subject to high temperatures and abrasion on processing equipment shall not be considered in calculating either the "fixed capital cost of the new components" or the "fixed capital cost that would be required to construct a comparable new facility" under § 60.15. Calciner and dryer equipment subject to high temperatures and abrasion are: end seals, flights; and refractory lining.

§ 60.734 Monitoring of emissions and operations.

(a) With the exception of the process units described in paragraphs (b), (c), and (d) of this section, the owner or operator of an affected facility subject to the provisions of this subpart who uses a dry control device to comply with the mass emission standard shall install, calibrate, maintain, and operate a continuous monitoring system to measure and record the opacity of emissions discharged into the atmosphere from the control device.

(b) In lieu of a continuous opacity monitoring system, the owner or operator of a ball clay vibrating grate dryer, a bentonite rotary dryer, a diatomite flash dryer, a diatomite rotary calciner, a feldspar rotary dryer, a fire clay rotary dryer, an industrial sand fluid bed dryer, a kaolin rotary calciner, a perlite rotary dryer, a roofing granules fluid bed dryer, a roofing granules rotary dryer, a talc rotary calciner, a titanium dioxide spray dryer, a titanium dioxide fluid bed dryer, a vermiculite fluid bed dryer, or a vermiculite rotary dryer who uses a dry control device may have a certified visible emissions observer measure and record three 6-minute averages of the opacity of visible emissions to the atmosphere each day of operation in accordance with Method 9 of appendix A of part 60.

(c) The owner or operator of a ball clay rotary dryer, a diatomite rotary dryer, a feldspar fluid bed dryer, a fuller's earth rotary dryer, a gypsum rotary dryer, a gypsum flash calciner, gypsum kettle calciner, an industrial sand rotary dryer, a kaolin rotary dryer, a kaolin multiple hearth furnace, a perlite expansion furnace, a talc flash dryer, a talc rotary dryer, a titanium dioxide direct or indirect rotary dryer or a vermiculite expansion furnace who uses a dry control device is exempt from the monitoring requirements of this section.

(d) The owner or operator of an affected facility subject to the provisions of this subpart who uses a wet scrubber to comply with the mass emission standard for any affected facility shall install, calibrate, maintain, and operate monitoring devices that continuously measure and record the pressure loss of the gas stream through the scrubber and the scrubbing liquid flow rate to the scrubber. The pressure loss monitoring device must be certified by the manufacturer to be accurate within 5 percent of water column gauge pressure at the level of operation. The liquid flow rate monitoring device must be certified by the manufacturer to be accurate within 5 percent of design scrubbing liquid flow rate.

(Approved by the Office of Management and Budget under control number 2060-A999)

§ 60.735 Recordkeeping and reporting requirements.

(a) Records of the measurements required in § 60.734 of this subpart shall be retained for at least 2 years.

(b) Each owner or operator who uses a wet scrubber to comply with § 60.732 shall determine and record once each day, from the recordings of the monitoring devices in § 60.734(d), and arithmetic average over a 2-hour period of both the change in pressure of the gas stream across the scrubber and the flowrate of the scrubbing liquid.

(c) Each owner or operator shall submit written reports semiannually of exceedances of control device operating parameters required to be monitored by § 60.734 of this subpart. For the purpose of these reports, exceedances are defined as follows:

(1) All 6-minute periods during which the average opacity from dry control devices is greater than 10 percent; or

(2) Any daily 2-hour average of the wet scrubber pressure drop determined as described in § 60.735(b) that is within 10 percent of the average value recorded according to § 60.736(c) during the most recent performance test that demonstrated compliance with the particulate matter standard; or

(3) Each daily wet scrubber liquid flowrate recorded as described in § 60.735(b) that is within 20 percent of the average value recorded according to § 60.736(c) during the most recent performance test that demonstrated compliance with the particulate matter standard.

(d) The requirements of this section remain in force until and unless the Agency, in delegating enforcement authority to a State under section 111(c) of the Clean Air Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected facilities within the State will be relieved of the obligation to comply with this section provided that they comply with the requirements established by the State.

(Approved by the Office of Management and Budget under control number 2060-A999)

§ 60.736 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.732 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and volume for each test run shall be at least 2 hours and 1.70 dscm.

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity from stack emissions.

(c) During the initial performance test of a wet scrubber, the owner or operator shall use the monitoring devices of § 60.734(d) to determine the average change in pressure of the gas stream across the scrubber and the average flowrate of the scrubber liquid during each of the particulate matter runs. The arithmetic averages of the three runs shall be used as the baseline average values for the purposes of § 60.735(c).

§ 60.737 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: No restrictions.

[FR Doc. 92-23450 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 514, and 550

[Docket No. 92-36]

Reduction of Notice Requirement for Tariff Increases in the Domestic Offshore Trades; Exemption Under Section 35 of the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

economic impact on a substantial number of small entities.

Collection of Information

This action contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. Section 2.B.2g.(5) provides that Bridge Administration program actions relating to the promulgation of operating requirement or procedures for drawbridges are excluded. A Categorical Exclusion Determination is available in the docket for inspection at the Office of Bridge Administrator-NY, Fifth Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.745 is revised to read as follows:

§ 117.745 Rancocas River (Creek).

(a) The following requirements apply to all bridges across the Rancocas River (Creek):

(1) Public vessels of the United States, state or local vessels used for public safety and vessels in distress shall be passed through the draw of each bridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn, or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed ten minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping or reversing.

(b) The draws of the SR#543 bridge, mile 1.3 at Riverside, the Conrail bridge, mile 1.6 at Delanco and the SR#38 bridge, mile 7.8 at Centerton, shall operate as follows:

(1) From April 1 through October 31 open on signal from 7 a.m. to 11 p.m.

(2) From November 1 through March 31 from 7 a.m. to 11 p.m., open on signal if at least 24 hours notice is given, except as provided in paragraph (a)(1) of this section.

(3) Year round from 11 p.m. to 7 a.m. need not open for the passage of vessels, except as provided in paragraph (a)(1) of this section.

Dated: June 29, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93-18010 Filed 7-28-93; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-4684-7]

Standards of Performance for New Stationary Sources: Calciners and Dryers in Mineral Industries; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the standards of performance for new, modified, and reconstructed calciners and dryers in mineral industries published on September 28, 1992 (57 FR 44496). Corrections are made to the definition of exceedances for recordkeeping and reporting purposes.

EFFECTIVE DATE: July 29, 1993.

FOR FURTHER INFORMATION CONTACT: For further information about this correction contact Mr. Warren Johnson, (919) 541-5124, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background

This correction document amends § 60.735 of subpart UUU of 40 CFR part 60. This section deals with the monitoring, recordkeeping and reporting requirements for the standards of performance for new, modified, and reconstructed calciners and dryers in mineral industries. As published, the final regulation contains errors that cause compliant monitoring records to be defined as exceedances, and vice versa.

Appropriate language defining exceedances for reporting purposes appeared in the notice of proposed rulemaking in the Federal Register, April 23, 1986, for which the public had no negative comments. Between proposal and promulgation, an attempt to shorten sentence structure inadvertently reversed the meaning of the intended exceedances provisions. Also, in the compliance provisions for a wet scrubber, the word "an" was inadvertently changed to "and" in describing an arithmetic average. This document restores the exceedances provisions to the language and meaning originally intended in the proposal, and also corrects the wet scrubber compliance provisions word error.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Metallic minerals, Nonmetallic minerals, Reporting and recordkeeping requirements.

Dated: July 2, 1993.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

Title 40, chapter I, part 60 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 60 is revised to read as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Authority: 42 U.S.C. 7401-7601.

§ 60.735 [Amended]

2. In § 60.735, paragraph (b), the phrase "and arithmetic average" is revised to read "an arithmetic average".

3. In § 60.735, paragraph (c)(2), the phrase "that is within 10 percent of" is

revised to read "that is less than 90 percent of".

4. In § 60.735, paragraph (c)(3), the phrase "that is within 20 percent of" is revised to read "that is less than 80 percent or greater than 120 percent of".

[FR Doc. 93-18103 Filed 7-28-93; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-18

[FPMR Amendment D-92]

Acquisition of Real Property

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Final rule.

SUMMARY: On December 9, 1991, the General Services Administration published in the Federal Register (56 FR 64221) a Proposed Rule which set forth certain revisions to the basic policy under which GSA leases, or delegates to other agencies the authority to lease, space in privately owned buildings. There are no major changes to the Final Rule as a result of agency comments on the Proposed Rule. These comments and GSA's response to them are addressed in the SUPPLEMENTARY INFORMATION below.

This Final Rule reinserts regulatory provisions which were inadvertently omitted from the CFR beginning with the July 1, 1986, issue. These provisions outline the scope of part and authority and are reinserted unchanged from the issued dated July 1, 1985. This Final Rule also increases to 20 years the allowable lease terms for certain categorical and agency special purpose space delegations. The maximum allowable lease term set forth in the Proposed Rule was 5 years.

DATES: Effective date: July 29, 1993.

ADDRESSES: Copies of comments that have been received are available in room 2324 of the General Services Building, 18th & F Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert E. Ward, Director, Office of Real Estate, Office of Real Property Development, Public Buildings Service, General Services Administration, Washington, DC 20405, telephone 202-501-4266.

SUPPLEMENTARY INFORMATION: Subsequent to the December 9, 1991, publication of this proposed amendment to 41 CFR part 101-18, comments were received from the Departments of Agriculture, Air Force, Commerce, Interior, Justice, and Veterans Affairs. The United States Postal Service and the Advisory Council on Historic Preservation also submitted comments. The majority of the suggested changes have been incorporated into this Final Rule. In those cases where suggested changes could not be accommodated, agencies have been provided with explanations for not incorporating their comments into the Final Rule. All agency comments have been resolved either through incorporation or explanation.

This Final Rule also (a) corrects and/or updates authority citations; (b) rearranges the order of paragraphs and/or placement of information within paragraphs to promote clarity and more logical sequence of material presented therein; and (c) streamlines the listing of agency special purpose space delegations in § 101-18.104-3. Those authorities granted to agencies by statute and/or specific delegation(s) granted by the Administrator of General Services are not reiterated in this section.

Executive Order 12291

GSA has determined that this Final Rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, will not cause a major increase in costs to consumers or others, and will not have significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions on this Final Rule on adequate information concerning the need for and consequences of this Final Rule. GSA has also determined that the potential benefits to society from this Final Rule far outweigh the potential costs, has maximized the net benefits, and has chosen the alternative involving the least net cost to society.

Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 41 CFR Part 101-18

Acquisition of real property by lease. Acquisition of real property by purchase or condemnation.

Accordingly, 41 CFR part 101-18 is amended as follows:

PART 101-18—ACQUISITION OF REAL PROPERTY

1. The authority citation for 41 CFR part 101-18 is revised to read as follows:

Authority: 40 U.S.C. 486(c); sec. 1-201(b), E.O. 12072, 43 FR 36869.

2. Subpart 101-18.0 is added and subpart 101-18.1 is revised to read as follows:

PART 101-18—ACQUISITION OF REAL PROPERTY

Sec.
101-18.000 Scope of part.
101-18.001 Authority.

Subpart 101-18.1—Acquisition by Lease

101-18.100 Basic policy.
101-18.101 Acquisition by GSA.
101-18.102 Acquisition by other agencies
101-18.103 Agency cooperation.
101-18.104 Delegation of leasing authority
101-18.104-1 Limitations on the use of delegated authority.
101-18.104-2 Categorical space delegations.
101-18.104-3 Agency special purpose space delegations.
101-18.105 Contingent fees and related procedure.
101-18.106 Application of socioeconomic considerations.

§ 101-18.000 Scope of part.

This part prescribes policies and procedures governing acquisition of interests in real property.

§ 101-18.001 Authority.

This part implements applicable provisions of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*); the Act of August 27, 1935, as amended, 49 Stat. 886 (40 U.S.C. 304c); the Public Buildings Act of 1959, as amended, Pub. L. 86-249, 73 Stat. 479 (40 U.S.C. 601-615); the Public Buildings Cooperative Use Act of 1976, Pub. L. 94-541, 90 Stat. 2505; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894; the Federal Urban Land-Use Act, Pub. L. 90-577, 82 Stat. 1104 (40 U.S.C. 531-535); the Rural Development Act of 1972, as amended, Pub. L. 92-419, 86 Stat. 657 (42 U.S.C. 3122); the Fair Housing Act, as amended, Pub. L. 90-284, 82 Stat. 81 (42 U.S.C. 3601 *et seq.*); Reorganization Plan No. 18 of 1950, 15 FR 3177, 64 Stat. 1270 (40 U.S.C. 490 note); Executive Order 12072, 43 FR 36869 (40 U.S.C. 490 note); and OMB Circular A-95 (41 FR 2052).

federal register

Thursday
January 7, 1993

Part II

Environmental Protection Agency

40 CFR Part 61
National Emission Standards for Hazardous Air Pollutants; Benzene Waste Operations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-4534-2]

National Emission Standards for Hazardous Air Pollutants; Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is clarifying widely misunderstood provisions to the national emission standards for hazardous air pollutants (NESHAP) for benzene emissions from benzene waste operations, subpart FF of 40 CFR part 61. Sources affected by subpart FF of this part include chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities at which waste management units are used to treat, store, or dispose of waste generated by chemical manufacturing plants, coke by-product recovery plants, or petroleum refineries.

The final amendments clarify points on which there has been confusion and provide additional options for compliance that give owners and operators increased flexibility in meeting the requirements of the rule while still meeting the NESHAP goals for health risk protection.

DATES: *Effective Date:* January 7, 1993.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the clarifying amendments to the NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before March 8, 1993. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements. Judicial review is not available for aspects of subpart FF that are not addressed by today's amendments.

ADDRESSES: *Docket.* Information related to the development of the amendments to subpart FF promulgated today is contained in categories XI through XIV of Docket No. A-89-06. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information on the rule amendments, contact Robert B. Lucas, Chemicals and Petroleum Branch (MD-13), telephone (919) 541-0884 or Gail Lacy, Standards Development Branch (MD-13), telephone (919) 541-5261, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information on the waiver policy for Subpart FF, contact Eric Crump, Chemicals and Petroleum Branch (MD-13), telephone (919) 541-5032, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background.
II. Overview of Final Rule Clarifications and Implementation.
III. Facility Applicability.
IV. Control Requirements.
V. Additional Exemption for Small Benzene Quantity Wastes.
VI. Alternative Compliance Options.
VII. Monitoring, Recordkeeping, and Reporting.
VIII. Policy for Granting Waivers of Compliance.
IX. General.
X. Administrative Requirements.

I. Background

On March 7, 1990 (55 FR 8292), the EPA promulgated under section 112 of the Clean Air Act (as it was written prior to the Clean Air Act Amendments of 1990), 42 U.S.C. 7412, NESHAP controlling emissions of benzene to the ambient air from waste operations (subpart FF of 40 CFR part 61). The NESHAP for benzene waste operations is applicable to owners or operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. In addition, this subpart applies to owners and operators of facilities at which waste management units are used to treat, store, or dispose of waste generated by chemical plants, coke by-product recovery plants, or petroleum refineries.

Due to widespread confusion among affected industries concerning key provisions of the rule, the EPA issued a stay of effectiveness of subpart FF on March 5, 1992 (57 FR 8012). The stay was to remain in effect until the EPA took final action on clarifying amendments to subpart FF. Clarifying amendments to the rule were also proposed on March 5, 1992. The EPA agreed to take final action on these amendments or before December 1, 1992 in a settlement agreement filed in connection with litigation on subpart FF. See *API* v. *EPA*, No. 90-1238 (D.C. Circuit) (Settlement Agreement).

With today's notice, the EPA is promulgating clarifying amendments to subpart FF and removing the stay. In accordance with section 112(q) of the Clean Air Act, as amended in 1990, these amendments are being promulgated under the authority of the Clean Air Act prior to enactment of the Clean Air Act Amendments of 1990. They are intended to clarify existing provisions of subpart FF and to provide additional flexibility to owners and operators who must comply with the rule while still meeting the NESHAP goals for health risk protection.

The comment period on the proposed clarifying amendments was from March 5, 1992 to May 4, 1992. Thirty-three comment letters were received. The commenters included companies affected by the rule, trade associations, and an environmental group. Most comment letters contained multiple comments. Commenters generally supported the proposed amendments, although many offered specific criticisms and suggested changes. The EPA considered all comments on the proposed rule amendments in developing the final amendments promulgated today.

In the March 5, 1992 notice of proposed rulemaking, the EPA requested specific comments on potential alternative structures for the rule that would encourage reclamation and recycling without compromising the NESHAP risk protection goals. To inform the affected public of the suggested alternative rule structures and major rule clarifications being considered, the EPA held a series of meetings, between proposal and promulgation of the rule amendments, with industry and an environmental group. A written record of each meeting was placed in the rulemaking docket for subpart FF. During and following these meetings, additional comments were submitted on the major rule clarifications and alternative rule structures. These comments were also considered by the EPA in developing the final rule amendments.

The clarifying amendments to subpart FF that are being promulgated today are discussed below. Comments received on the proposed amendments and the EPA's responses to those comments are also discussed.

Some commenters submitted comments on aspects of the original rule that were unaffected by the proposed amendments. These comments are outside the scope of the rulemaking for

proposed amendments. Therefore, these comments, although mentioned, are not addressed in this rulemaking.

II. Overview of Final Rule Clarifications and Implementation

The EPA proposed clarifying amendments to several provisions of subpart FF to resolve confusion. Several clarifications related to facility applicability including: (1) Clarifying which wastes are included in the calculation of total annual benzene quantity in all aqueous waste streams (TAB); (2) elaboration on the definition of point of waste generation; and (3) making clear that waste treatment cannot be used to lower facility TAB. Other proposed amendments included a 1.0 megagram per year (Mg/yr) of benzene exemption from controls for small quantity benzene wastes, a requirement that facilities prepare and implement a maintenance turnaround plan, and other miscellaneous clarifications. Comments were specifically requested on the need for a maintenance turnaround plan, the risks associated with organic wastes, and on possible alternative structures for the rule that would encourage recycling and reclamation while still meeting the NESHAP risk protection goals.

The EPA carefully considered comments received on the proposed clarifying amendments, and has made several changes in the final rule. These changes include the following:

(1) Raising the proposed 1.0 Mg/yr of benzene exemption to 2.0 Mg/yr of benzene, and removing the proposed restrictions on which wastes are eligible for this exemption;

(2) Deleting the requirement for a maintenance turnaround plan;

(3) Adding an elective option for averaging the benzene in process unit turnaround wastes in the calculation of facility TAB;

(4) Establishing separate control requirements based on containment controls for certain organic wastes that are managed in tanks; and

(5) Including an additional compliance option for facilities that are above the 10 Mg/yr applicability threshold.

Other more minor changes were also made based on comments received. All changes made to the clarifying amendments between proposal and promulgation are discussed in detail beginning in section III of this preamble.

Facilities subject to the rule are required to be in compliance with all provisions of the amended rule within 90 days from today, unless a waiver of compliance is obtained under §§ 61.10 and 61.11 of the General Provisions to 40 CFR part 61. Additional information on the policy for granting waivers of compliance for subpart FF, as amended, is discussed in section VIII of this preamble. Detailed guidance on the waiver policy is provided in a separate document, "Benzene Waste Operations—NESHAP Waiver Guidance." No waiver of compliance issued will extend beyond 2 years from today's date.

All facilities subject to Subpart FF are required to submit a report that summarizes the regulatory status of each waste stream covered by the rule to the appropriate EPA regional office or delegated State or local agency. A facility that has previously submitted this report to the EPA or to the delegated State or local agency and, after reviewing the clarifying amendments promulgated today, believes that the previous report is accurate, may submit a statement to this effect rather than resubmitting the entire previous report.

In an advance notice of proposed rulemaking (ANPR), the EPA is announcing the intent to propose an additional compliance option, based on site-specific risk assessment, for public comment. Facilities that may want to utilize this alternative compliance option if it is added to the rule are eligible to apply for a waiver of compliance. Additional information on waivers of compliance for facilities that may want to utilize site-specific risk assessment as a compliance option is presented in section VIII of this preamble.

III. Facility Applicability

Subpart FF is applicable to petroleum refineries, chemical plants, and coke by-product recovery facilities. It also is applicable to treatment, storage, and disposal facilities (TSDF) that receive wastes from petroleum refineries, chemical plants, and coke by-product recovery facilities.

The calculation of TAB determines whether a facility is subject to the control requirements of the rule. A facility at or above the TAB threshold in the rule of 10 Mg/yr is required to control each benzene waste stream at the facility or demonstrate that the waste stream meets a criterion in the rule for exemption from control. A facility with a TAB below 10 Mg/yr is only subject to the rule's reporting and recordkeeping provisions, unless the facility receives a waste from offsite that must be controlled to meet subpart FF, in which case that waste must be controlled.

Following promulgation of subpart FF on March 7, 1990, it was evident that many members of the regulated community were either confused about or had misunderstood the EPA's intent on how the applicability of control requirements in the rule to facilities should be determined. Given the critical importance of this determination of facility applicability, the EPA proposed amendments in the March 5, 1992 notice to clarify how facility applicability is determined. Comments received on the proposed clarifications related to facility applicability, and the EPA's responses to them, are discussed in the following sections.

A. Wastes Included in the TAB Calculation to Determine Applicability of Control Requirements

The proposed amendments sought to clarify the EPA's general intent that the benzene in all aqueous wastes and wastes that become aqueous be included in the TAB calculation. To resolve prior confusion, discussion in the preamble and proposed clarifying language in the regulation specifically stated that the following wastes are among those whose benzene should be included in the calculation of facility TAB: Organic wastes that become aqueous (i.e., are mixed with water or other aqueous wastes such that the water content of the waste exceeds 10 percent); materials subject to subpart FF that are sold; and wastes that may be exempted from control under the rule based on low benzene concentration, low benzene quantity, or low total waste quantity.

The proposed amendments also included a clarification to address how wastes generated on an infrequent basis, such as wastes from process unit turnarounds, are counted in the TAB calculation. Under the proposed clarifications, these wastes would have been counted in a facility's TAB for the year in which they are generated.

To avoid creating a disincentive for facilities to undertake voluntary remediation activities, the proposal included an exception for remediation wastes. The proposed clarification would exclude these wastes from the facility TAB calculation but require that they are subject to control if the facility TAB is 10 Mg/yr or greater. Thus, the benzene content of remediation wastes would not affect whether a facility is subject to the control requirements of the rule.

Industry representatives commented on several aspects of the proposed clarifications related to facility applicability. After consideration of these comments, the EPA is proceeding with all of the clarifications as proposed with the exception of the proposed language for process unit turnarounds.

The final amendments allow facilities to average the benzene in wastes generated by process unit turnarounds in the calculation of TAB. Further discussion of the comments received and the EPA's responses is presented below.

Materials Subject to Subpart FF That Are Sold

One commenter claimed that the EPA had created additional confusion with the proposed clarification in § 61.342(a)(2) that the benzene in a material subject to subpart FF that is sold is included in the calculation of TAB if the material meets the definition of a waste and has an annual average water content greater than 10 percent. The commenter further states that with this proposed change, the EPA has raised questions concerning the status of materials that have never been regarded as wastes.

It has always been the EPA's intent that if a material meets the definition of a waste in the rule, then the benzene in that material should be included in the calculation of TAB based on its benzene content at the point of generation. The purpose of the proposed amendment was to clarify more specifically that the act of selling a material does not, by itself, mean that the material is not subject to subpart FF. The definition of waste in the rule is intentionally broad and does not differentiate between materials based on their ultimate end use. This is because any material containing benzene that meets the rule's definition of waste has the potential to be a source of benzene emissions. Further, materials that meet the definition of waste are generally not subject to other rules that limit benzene air emissions.

Although not explicitly stated by the commenter, the EPA sees two potential concerns by industry associated with materials subject to Subpart FF that are sold. One concern might be that including the benzene in these materials in facility TAB causes facilities otherwise below 10 Mg/yr to exceed this TAB threshold for the applicability of subpart FF control requirements. However, the commenter gave no indication to what extent this may be a problem.

A second potential concern might be from the perspective of facilities with TAB's above 10 Mg/yr. The owners or operators of these facilities may not understand the control requirements at the generator site and at the site receiving them for materials that are sold. Since these materials are potential sources of benzene emissions, the EPA has always intended that they be controlled as are other materials that meet the definition of waste in subpart FF. At the generator site, these materials must be managed in units equipped with emission controls prior to shipment offsite as specified in the rule. As required under § 61.342(f), the generator is required to include with each shipment offsite of waste, a notice stating that the waste must be managed and treated in accordance with the requirements of subpart FF. In the case of materials that are sold, the receiving site may be purchasing them for input to another process as a raw material. In that case, at the receiving site, materials subject to subpart FF would have to be managed in units meeting the subpart FF requirements for benzene air emission control up to the point the materials reenter a process; at the process reentry point the sold materials would no longer be subject to subpart FF. In meetings following the proposal of the clarifying amendments, the EPA asked for additional supporting information from industry to indicate the extent of concern regarding materials subject to subpart FF that are sold and to aid in evaluating the impact of the proposed clarification. No additional information has been received by the EPA.

Without additional information submitted to support the comment on materials subject to subpart FF that are sold, the EPA is not persuaded that these wastes should be excluded from the rule or the TAB calculation. Therefore, the promulgated clarification is unchanged from proposal.

Remediation Activities

The EPA received comments from industry in support of and in opposition to the proposed clarification on remediation wastes. Those supporting the proposed amendments believed that the EPA had correctly recognized that without this clarification, there would be a disincentive for facilities to undertake voluntary remediation activities. Those opposing the proposed clarification objected to inclusion of these wastes in the rule at all. One commenter argued that remediation wastes are already controlled under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and thus should not be controlled by subpart FF. Another commenter claimed that the control requirement for remediation wastes would create a disincentive to conduct remediation activities and that solid waste remediation (e.g., contaminated soils) should be removed from the scope of the rule because control of these wastes is best left to the regulatory agency directing the cleanup, and because these wastes may require controls and equipment dissimilar to the controls discussed in the rule. The commenter noted that few solid waste remediation activities are voluntary, citing RCRA and CERCLA as statutes driving many such remediation activities.

The EPA disagrees with the commenters opposed to the proposed clarification. While the EPA believes it is reasonable to exclude the benzene in remediation wastes from facility applicability determination (in order not to create a disincentive for voluntary remediation actions), there is a strong rationale to control these wastes at a facility to which the control requirements apply. Materials generated by remediation actions fall within the definition of waste in the rule and can contain significant amounts of benzene. In general, these materials would be expected to be managed with other wastes at a facility. If these materials were excluded from the control requirements of the rule, benzene air emissions from remediation actions could be left uncontrolled, resulting in the remediation activity transferring benzene contamination from another media into the air. Consequently, the EPA believes that at facilities with a TAB above the control threshold in the rule of 10 Mg/yr, wastes from remediation activities should be subject to the control requirements of the rule as are other wastes containing benzene.

The EPA also disagrees that the proposed change would create a disincentive for facilities to undertake remediation activities. To the contrary, by proposing that the benzene in remediation wastes not be included in the TAB calculation, the proposed change would remove the potential disincentive in the original rule for a facility with a TAB below 10 Mg/yr to undertake voluntary remediation actions. That the proposed change would accomplish this is supported by some commenters. Further, to the extent that benzene emissions from these wastes are controlled by CERCLA or RCRA, no additional effort would be required under subpart FF. For these reasons, remediation wastes are excluded from TAB, but are subject to the control requirements of the rule. At facilities whose TAB's are at or above 10 Mg/yr, remediation wastes are subject to the rule's control requirements in the same manner as any other wastes.

Regarding the types of controls needed for soil remediation wastes, the EPA believes that these wastes can be managed and treated in units that meet

the control requirements of subpart FF. he rule does not apply to the act of cavating benzene-contaminated soil, a point perhaps misunderstood by the commenter. However, after the ontaminated soil is excavated, it then neets the definition of a waste, and is ubject to the rule. Once excavated, waste containing 10 ppmw or greater benzene is required to be handled in vaste management units (e.g., ontainers) for which the controls specified in the rule are applicable and appropriate. The treatment requirement n the rule is a performance standard i.e., reduce concentration of benzene in the waste to below 10 ppmw, or by 99 percent) and does not specify the nethod of treatment. Methods such as solvent extraction and thermal treatment are demonstrated technologies that are available to meet this performance standard for soil remediation wastes. The requirement in subpart FF for the control of air emissions from a treatment technology that is used is also a performance standard (reduce organic emissions by 95 percent or benzene by 98 percent). This level of control has been demonstrated to be achievable and is comparable to what is required for the control of air emissions from treatment units permitted under the RCRA.

One company asked whether the benzene in a remediation waste that is sent offsite to a TSDF is counted towards the TAB of the TSDF. The benzene in all wastes (including remediation wastes) received by a TSDF from chemical plants, petroleum refineries, and coke by-product recovery plants and that contain 10 percent or greater of water count towards the TAB of the TSDF. This is discussed further in section III.C of this preamble.

Infrequently Generated Wastes

The proposed rule amendments included a clarification that the benzene in waste streams generated on an infrequent basis, such as wastes from process unit turnarounds (also referred to as maintenance turnarounds) that occur only once every 2 to 5 years or less frequently, is counted in the TAB calculation for the year in which the wastes are generated. The proposed clarification specifically stated that the benzene in these wastes is not averaged over the time period between occurrences of the activities that generate the wastes. The EPA received a number of comments on this proposed clarification.

Most of the comments received on this proposed clarification addressed process unit turnaround wastes. Commenters specifically opposed the proposed inclusion of the benzene in process unit turnaround wastes in the TAB calculation for the year in which the waste is generated. The concern expressed by commenters was that, because of the potentially significant amount of benzene in process unit turnaround wastes, the proposed clarification could cause facilities with a TAB otherwise below 10 Mg/yr to go above this level in the year that process unit turnaround occurs.

One commenter cited an example where wastes containing 2.5 tons of benzene were generated during process unit turnaround at a facility with a TAB that in other years is just below 10 Mg/yr. In this situation, process unit turnaround wastes would trigger applicability of the control requirements of the rule to all wastes at the facility, but only in the years that process unit turnaround occurs. As a remedy for this, commenters suggested that the EPA allow the averaging of infrequently generated wastes in the TAB calculation over the period between occurrences.

The EPA agrees with commenters that the clarification as proposed would create the potential for a facility to exceed the 10 Mg/yr TAB threshold only in those years when a process unit turnaround occurs. Previously, the EPA was not aware of the extent to which the benzene in process unit turnaround wastes could influence the applicability of control requirements at facilities subject to the rule. Based on the comments received, it is clear that the proposed clarification would substantially impact some smaller facilities, requiring them to purchase and install controls for use only in years in which process unit turnaround occurs or face penalties for noncompliance in those years. This is not the EPA's intent.

The EPA considers the suggestion made by commenters that, for the purpose of the TAB calculation, the benzene in intermittently generated wastes be averaged over the period between occurrences to be a reasonable one for process unit turnaround wastes generated as infrequently as once every 2 years or longer. Consequently, the final rule clarifications include an elective option in § 61.355(b)(4) for averaging the benzene in process unit turnaround wastes in the calculation of facility TAB. To compute a yearly contribution to facility TAB under this option, the benzene in process unit turnaround wastes generated during the most recent turnaround is divided by the period of time between the two most recent turnarounds. A facility selecting this approach will report an annual contribution to facility TAB for the process unit regardless of whether the unit had a turnaround in the reporting year. If turnaround occurs separately for individual process units within a facility, the annual contribution to facility TAB shall be computed separately for each process unit.

For example, assume there is a process unit for which turnaround occurred in 1988 and in 1991, and the facility does not anticipate turnaround again until 1995. In 1993, the first year of compliance with the amended rule, the annual contribution to TAB from turnaround of the process unit would be the benzene quantity from the 1991 turnaround divided by three (because the period from 1988 to 1991 covers three years). This same value would be used in the calculation of TAB for 1994 and 1995. If the process unit turns around again in 1995, as anticipated, the value would change in 1996 to be the quantity generated from the 1995 turnaround divided by four (4-years between 1991 and 1995). Subsequent TAB calculations would use this value until the next turnaround of the process unit.

Owners and operators are not required to average process unit turnaround wastes. For most facilities, it will simplify the TAB calculation to record the benzene in process unit turnaround wastes only in the year that a turnaround occurs. The option of averaging the benzene in process unit turnaround waste is expected to be elected by a facility whose TAB is just below 10 Mg/yr and where the benzene in process turnaround waste could cause the facility to exceed 10 Mg/yr in the year that turnaround occurs if averaging were not allowed. A facility with a TAB significantly below 10 Mg/yr is not likely to average the benzene in process unit turnaround waste unless averaging is necessary to maintain the facility TAB below 10 Mg/yr. Facilities whose TAB is above 10 Mg/yr based on the benzene in wastes other than process unit turnaround wastes, are not likely to elect this option.

Commenters also requested that wastes associated with process upsets should be excluded from the TAB calculation. No information was supplied by the commenters on the possible magnitude of the benzene in these wastes or the potential impact of these wastes on facility applicability determinations. Without such information, the EPA has no basis for assessing the impact on benzene emissions and risk basis for assessing the impact on benzene emissions and risk if these wastes were excluded. Consequently, these wastes are covered by the rule and must be included in a

facility's TAB calculation if the waste contains greater than 10 percent water, or is mixed with water or other wastes at any time and has an annual average water content over 10 percent. Further, since process upsets are random events that do not occur at predictable intervals (as do process unit turnarounds), the development of a methodology whereby the benzene in these wastes could be averaged in the calculation of TAB is not appropriate. Therefore, the benzene in a waste generated by a process upset must be included in the facility's TAB calculation in the year the waste is generated.

B. Clarifications on Point of Waste Generation

Subpart FF requires that the characteristics of waste streams at their "point of generation" be used for the purposes of calculating a facility's TAB, which in turn determines applicability of Subpart FF control requirements to a facility. For a limited number of facilities that are subject to the rule, in particular for those whose TAB is just below or above 10 Mg/yr, the definition of the point of generation of waste streams can affect facility applicability.

Due to confusion over the rule's original language related to point of generation, the EPA proposed to simplify the definition of point of generation in § 61.341 and also clarify in §§ 61.355 (b) and (c) where waste quantity and flow-weighted annual benzene concentration are determined for the purpose of calculating TAB. Comments received on these proposed changes are discussed below.

Definition of Point of Generation

The proposed definition of point of generation in § 61.341 focused on the difference between process and waste management units and emphasized that the point of waste generation is before any waste treatment. Numerous comments were received on the proposed definition.

Several commenters argued that the point of generation should be where a waste is first exposed to the atmosphere. These commenters claimed that relating the point of generation to the point of exposure to the atmosphere was essential to simplifying applicability of the rule and promoting recycling and source reduction of wastes.

The EPA explained in the preamble to the proposed rule amendments that its intent in specifying the point of generation was (1) to establish the true emission potential of a stream, prior to any losses that occur through volatilization to the atmosphere and prior to any waste treatment, and (2) to have affected facilities calculate their TAB in a manner consistent with the EPA's intended structure for the rule; that is, consistent with how the EPA determined which facilities should be controlled to meet the NESHAP risk goals. To adopt the commenters' suggestion would be contrary to these stated intentions for the rule as originally structured. A definition entirely based on where waste is exposed to the atmosphere would allow waste treatment as a means of reducing facility TAB. If this were allowed, facilities could simply treat wastes such that facility TAB was lowered to just below 10 Mg/yr, thereby avoiding the control requirements of the rule. Further, there would be no assurance that treatment processes would be controlled for benzene air emissions. As discussed in the proposal preamble, this was not the EPA's intent in the original rule structure and may not achieve the NESHAP risk goals (see 57 FR 8021 and 8022). Therefore, the EPA has not adopted the commenters suggested definition of point of generation for the original rule structure.

Moreover, the purpose for these amendments is to clarify the original intent of the rules with respect to the point of waste generation. If this rulemaking was just being initiated, the EPA may have considered a different regulatory approach to meet the NESHAP risk policy goals.

However, as discussed in section VI of this preamble, the EPA has included in the final rule amendments an additional compliance option for facilities subject to the control requirements of subpart FF (i.e., those facilities with TAB's above 10 Mg/yr). This option is being promulgated specifically in response to commenters who requested an additional compliance option that would further promote reclamation and recycling of wastes at facilities affected by the rule and that must install controls. Under this option, a facility owner or operator may selectively manage wastes such that the mass of benzene in wastes after management in units equipped with air emission controls (or after treatment in devices equipped with air emission controls), plus the mass of benzene in wastes not managed in controlled units (at their point of generation) is less than 6 Mg/yr (see section VI of this preamble). For waste streams that are managed from their point of generation in units controlled at least to the level required by the rule or that are treated to reduce benzene, the benzene quantity is determined before the waste enters the first unit uncontrolled for air emissions. Thus, this option does, in effect, allow compliance with the rule for controlled waste streams to be determined based on the characteristics of the waste at the point where it is first exposed to the atmosphere.

One commenter stated that rarely is there a "bright line" between equipment that is integral to a process and equipment that is nonintegral in refinery processes. The commenter expressed concern about how the EPA would make case-by-case decisions on integral versus nonintegral equipment and whether these decisions would be published. Other commenters described site-specific equipment configurations claimed to be processes that promote resource recovery and requested that the EPA clarify the location of the point of generation for these configurations.

The EPA believes that through the definitions of waste, waste management unit, and point of generation, the rule provides adequate direction to determine the distinction between a waste management unit and a process unit. The definition of waste determines which materials at a facility comes under potential coverage by subpart FF. Which facilities are subject to the control requirements of subpart FF, and which waste streams must be controlled at those facilities is determined based on the characteristics of waste streams at their point of generation. The point of generation of a stream is after it has left a process and prior to handling or management in a unit that is not integral to the process, including prior to processes that promote resource recovery.

In general, and as discussed in the proposal preamble, the distinction between what is a waste management unit and what is a process unit is based on the material managed in the unit (see 57 FR 8020). If the material meets the definition of waste in the rule, then the unit is a waste management unit and the point of generation would be at a location prior to where the waste enters this unit. This is a primary criterion for distinguishing waste management units from process units for the purposes of subpart FF.

In limited situations, a material may meet the definition of a waste, but because it never leaves a process unit component, there may not be a point for that material that technically meets the definition of point of generation in the rule. This may be the case where materials are recycled within a process (e.g., product distillation reflux streams) or where materials are directly hardpiped from one process to another without accumulation, storage, or treatment. If a material never leaves a process, it is not covered by the rule.

en though it may meet the definition. w e. The burden, however, will be o ers and operators to demonstrate it the material does not leave the ocess, and that units claimed to be oc units are, in fact, integral to the oc s. Additional discussion on ate als recycled to a process or within process is presented in section III.E of is preamble.

W re site-specific determinations on e p nt of generation are requested, ey will be made by the EPA regional fices and delegated State and local en es consistent with the final rule ne ments. Regions, States, or local encies that get applicability terminations that may be precedent tti or have nationwide importance ill ork with the EPA Headquarters in aking the determinations. The EPA eadquarters will then distribute these ete inations to other EPA regional ffic and State and local agencies as ppropriate.

isted Exceptions in § 61.355 for Sour Vat Streams and Wastes at Coke By-roc ct Plants

The proposed rule amendments, larif that for the purpose of a facility's TA alculation, all determinations of vas stream annual quantity and enzene concentration are made at the oint of generation with three xc tions. The listed exceptions are for vas s at coke by-product recovery lants handled in units subject to ubpart L of 40 CFR part 61, sour water tre ns treated in sour water strippers, inc vastes received by a TSDF from offsite. Due to the special circumstances xplained in the proposal preamble, the qu ity and benzene concentration of he wastes are determined at a ocation different from the point of eneration (and described in §§ 61.355 (b) and (c) of the proposed rule am dments).

S eral commenters supported this proposed clarification. One commenter asked the EPA to accord natural gas str ers and other strippers inherently co olled for air emissions the same status in the rule as sour water strippers. The EPA does not believe that the ex tion should apply to natural gas an other strippers.

In general, in the analysis performed to support subpart FF, the EPA ev ated waste streams based on their be ene content at the point of generation, and prior to any waste treatment. Certain exceptions were ma e, however, based on unique ci mstances.

Although sour water strippers are considered by the EPA to be waste treatment devices, the benzene content of each sour water stream treated in a sour water stripper was assumed in the analysis based on its benzene concentration at the exit of the stripper. This is because information supplied to the EPA by industry at the time the analysis was performed was for the characteristics of waste streams at the exit of sour water strippers. The analysis showed that for these streams, assuming benzene content at the exit of the stripper, and assuming inherent control for air emissions of the treatment device, the NESHAP risk protection goals would be met. This was explained in the preamble to the proposed amendments (see 57 FR 8021). Similar assumptions could not be made for other strippers based on the limited information available at the time of the analysis. Further, the application of sour water strippers is limited to the treatment of sour water streams, not any waste containing benzene.

For these reasons, the EPA considers sour water strippers to be unique relative to other treatment devices, not comparable to natural gas strippers and other strippers inherently controlled for air emissions. To accord natural gas strippers and other strippers the same status in the rule as sour water strippers would imply a general allowance of waste treatment as a means of lowering facility TAB. As discussed in the notice of proposed rulemaking for the clarifying amendments, this is clearly not the EPA's intention. Generically allowing waste treatment to lower facility TAB would be inconsistent with the EPA's intended rule structure in a way that could jeopardize attainment of the NESHAP risk protection goals for several reasons. For example, if waste treatment were generically allowed to lower TAB such that a facility is no longer subject to the control requirements of the rule, there would be no assurance that the treatment process was controlled for air emissions, there would be no control of benzene emissions from organic wastes, and facilities could treat wastes such that facility TAB was lowered only to 10 Mg/yr. All of these results would be inconsistent with the EPA's intended structure for the rule. Based on this, the commenter's suggestion was not adopted in the final rule amendments. It should be pointed out, however, that natural gas strippers and other strippers inherently controlled for air emissions are likely in compliance with the control requirements of the rule for those sources, although other waste management sources at the same facility may require additional control.

C. Applicability of the Rule to TSDF

The preamble to the proposed amendments described how control of wastes received by TSDF from chemical plants, petroleum refineries, and coke by-product recovery plants can be required under the rule in two ways (see 57 FR 8021). Control of these wastes is required at the TSDF if either (1) the TAB calculated for the TSDF is 10 Mg/yr or greater (based on the characteristics of the wastes at the point they enter the TSDF), or (2) if the waste would have been required to be controlled to meet the rule by the generator if it had not been shipped offsite (i.e., the generator's TAB is 10 Mg/yr or greater and the waste contains 10 ppmw or more of benzene).

Although no changes were proposed to the specific rule requirements that address the shipment of wastes offsite, in the second case, comments were received that the "need to control" a waste should not accompany the waste when it is shipped from a generator with a TAB of 10 Mg/yr to a TSDF with a TAB below 10 Mg/yr. Two commenters specifically stated that this could restrict the number of TSDF willing to accept refinery wastes.

It is the EPA's intent that wastes generated by any facility subject to the rule with a TAB of 10 Mg/yr or greater be controlled, regardless of whether the waste is sent offsite or not. Consistent with this intent, the rule requires that wastes sent to any offsite facility (including TSDF) by a generator with a TAB of 10 Mg/yr continue to be subject to the control requirements of subpart FF until they are treated to the level required by the rule or they reenter a process at the offsite facility.

Dispersal of wastes to offsite facilities where controls may not be required is not an acceptable means of reducing the potential health risks associated with these wastes for two reasons. First, if the "need to control" a waste did not go with it when it is shipped offsite as suggested by the commenters, this could lead to the distribution of significant quantities of benzene wastes to uncontrolled facilities (e.g., to TSDF's with TAB's significantly below 10 Mg/yr currently). This would result in an increase in benzene emissions and risk and conflict with the NESHAP risk protection goal of minimizing the population at a risk of greater than one in one million.

Secondly, there would be no guarantee that potential benzene emissions and risk would actually be dispersed. For example, even if a TSDF were under separate ownership, it could be located contiguous to a facility

generating the waste. In this case, "offsite" may simply be across the street. For these reasons, the final rule as amended still requires wastes shipped to a TSDF from a generator with a TAB of 10 Mg/yr to be controlled at the TSDF, even when the TSDF's TAB is below 10 Mg/yr.

As mentioned earlier, a question was raised after proposal of the rule amendments as to whether the benzene in a remediation waste that is sent offsite to a TSDF is counted towards the TAB of the TSDF. The benzene in all wastes (including remediation wastes) that are received by a TSDF from chemical plants, petroleum refineries, and coke by-product recovery plants and that contain greater than 10 percent water or that are mixed with water or other wastes and have over 10 percent water content count towards the TAB of the TSDF. The benzene in remediation wastes generated offsite are not excluded from the calculation of TAB (see § 61.342 (a) (3)) for a TSDF or any other facility subject to the rule (although it is still not included in the TAB for the generator site) for two reasons.

First, the objective in excluding remediation wastes from facility TAB is to remove the potential influence that concern over facility applicability might have on a facility owner or operator's decision whether or not to undertake a voluntary remediation action. That is, would the benzene in remediation wastes, if generated, cause facility TAB to go from below 10 Mg/yr to above 10 Mg/yr, triggering the possible need for controls? This consideration does not apply to facilities receiving wastes from offsite where the owners are not making decisions on whether to generate wastes.

Second, if the benzene in remediation wastes were excluded from the TAB calculation at a TSDF, there would be no limit on the amount of remediation wastes that could be received before facility controls would be required. This could potentially result in an unacceptable increase in the maximum individual risk or the population exposure. (As explained in section III.C of this preamble, however, any waste that is subject to the control requirements of the Subpart at a generator site must also be controlled if sent to a TSDF, regardless of the TAB of the TSDF.) Thus, under the final rule amendments, if remediation wastes are sent offsite to a TSDF or other facility, the benzene in these wastes does count towards the TAB of the TSDF.

D. Wastes Exempt From the Rule

The EPA proposed to remove confusion over what wastes are exempt from the rule by removing paragraph (c)(3) of § 61.340. This section identified intermediate and product distillation reflux streams as examples of materials that could meet the definition of waste but are not subject to subpart FF because they are not discharged from a process. This section had caused confusion and, in the EPA's view is unnecessary since other provisions in the rule clearly indicate that materials that never leave a process are not subject to the rule. A commenter objected to the complete removal of § 61.340(c)(3), claiming that if it is removed, the EPA will be bringing streams under the rule that would have been exempt.

The EPA considered this comment but is proceeding with the deletion of § 61.340(c)(3). The exemption in this section was originally designed to apply to a narrow population of wastes that included primarily intermediate and product reflux streams, but the examples provided in the rule had been misinterpreted by some affected facilities to mean that a wider population of wastes were not subject to the rule. The EPA believes that the focus in determining which materials are subject to the rule such as identified in the commenters example should be on the definition of waste. Under this definition, waste means "any material resulting from industrial, commercial, mining, or agricultural operations, or from community activities that is discarded or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being discarded, recycled or discharged."

The prior wording of § 61.340(c)(3) was unclear in that it did not adequately tie the status of materials under subpart FF to the definition of waste in the rule, and as such, led some to believe that even if a material were accumulated or stored prior to waste treatment, it might be exempt from the rule. A proper focus on the definition of waste makes § 61.340(c)(3) in the original rule unnecessary. Applying the test of whether a material is accumulated, stored, or treated prior to being discharged or recycled will resolve uncertainty about the status of a material under subpart FF in most cases.

Examples provided by commenters reinforced the need to clarify coverage of the rule in a more general way than through the limited examples previously provided in § 61.340(c)(3). For instance, a refinery example cited by one commenter was overhead condensate from a distillation column that is recycled in enclosed piping to the crude desalter. This operation is not integral to the process. However, it is an example of voluntary direct recycle from one process to another (i.e., the material never leaves the process). As discussed in the next section, if a material never leaves a process, it is not within the scope of subpart FF.

E. Materials Recycled to a Process or Within a Process

The proposal included a revision to § 61.342(c)(1)(iii) to clarify the EPA's intent that waste streams that are recycled be managed and treated according to the requirements in § 61.342(c) up to the point that the waste reenters the process, including entry to a tank used for the storage of production process feed, product, or product intermediates. Commenters did not specifically object to this proposed clarification, but stated that further rule language was needed to clarify that materials recycled within a process or directly to another process are outside the scope of subpart FF. One commenter claimed that in the preamble to the proposed rule amendments, the EPA had indicated that recycled or reclaimed materials that are recycled within a process or directly recycled to another process are not within the scope of the rule. This commenter believes that similar language should be added to the regulation in order that there be a clear understanding on this point by both enforcement officials and the regulated community.

After consideration of these comments, the EPA believes that further clarification in the rule on materials recycled within a process or directly to another process is unnecessary. In the preamble to the proposed rule amendments, the EPA stated that "recycled or reclaimed materials will generally be subject to subpart FF unless they are recycled within a process or are directly recycled to another process." The basis for this statement was not the EPA's intent that materials recycled within a process or directly recycled to another process should by definition be exempt from the rule, but an assumption by the EPA that these materials generally would not meet the definition of waste in the rule.

To meet the definition of waste in the rule, a material must either be discarded or accumulated; stored, or physically, chemically, thermally, or biologically treated prior to being discarded, recycled or discharged. The test for whether materials recycled within a process or that are recycled directly to

another process are subject to the rule is whether they are accumulated, stored, or treated prior to recycling: If they are, they are subject to the rule.

F. Definition of Waste

Although the EPA did not propose to amend the definition of waste in the original rule, several commenters suggested that the EPA take action on this. Commenters criticized the definition of waste in the rule as overly broad, discouraging pollution prevention, and covering non-waste materials. Two commenters objected to the EPA's use of spent caustic in the proposal preamble, stating that it is not always a waste. One commenter requested that the EPA redefine waste to reflect the end use of a material.

As noted, the EPA did not propose any change to the definition of waste in the original rule. The definition of waste that was promulgated in the original rule was the same as proposed on September 14, 1989 (54 FR 38083). The EPA responded to comments on the proposed definition of waste in the notice of final rulemaking issued on March 7, 1990 (see 55 FR 8318). Therefore, comments on the definition of waste in the rule that were received following publication of the proposed rule amendments are outside the scope of this rulemaking.

Regarding spent caustic, the EPA acknowledges that this material is not always subject to subpart FF. In the example presented in the proposal preamble, it was assumed that spent caustic met the definition of waste. If spent caustic does not meet the definition of waste in the rule, then it is not subject to subpart FF.

IV. Control Requirements

Several comments were received on proposed clarifying amendments affecting control requirements that apply at facilities with TAB's of 10 Mg/yr or greater. These comments and the EPA's responses are discussed below.

A. Control Requirements for Organic Wastes

A clarification to § 61.342(c)(1) was proposed to reflect the EPA's intent that all wastes (that contain benzene at a concentration of 10 ppmw or more and do not meet other exemption criteria) at a facility with a TAB of 10 Mg/yr or more are subject to the control requirements of the rule. For the purpose of the TAB calculation, aqueous wastes are those containing 10 percent or more total water and nonaqueous (i.e., organic) wastes are those containing less than 10 percent total water. Only the benzene in aqueous wastes counts towards facility TAB. Once it is determined that a facility must install controls, the original rule made no distinction between aqueous and organic wastes. The same level of control was required for all wastes except those containing less than 10 ppmw benzene or those meeting other criteria for exemption from controls. In the proposal preamble, the EPA specifically solicited comments on the risks associated with organic waste streams.

The EPA did not propose that the benzene in organic wastes be included in facility TAB, a point apparently misunderstood by one commenter. Rather, language was included in § 61.342(a) of the proposed amendments to clarify the EPA's original intent that the benzene in organic wastes that become aqueous during waste management are included in TAB. If organic wastes are not mixed with water or with other wastes such that they become aqueous, the benzene in them is not included in TAB and, therefore, does not affect determinations of which facilities are subject to the control requirements in the rule.

Several comments were received on the need to control organic wastes and the level of control required. Most of the commenters requested that the EPA raise the threshold level for control for organic wastes in the final rule to 1,000 ppmw (i.e., not require controls for organic wastes containing benzene below this concentration level). This request was based on the commenters' assertion that the emission potential of benzene dissolved in organic waste is much lower than the emission potential of benzene dissolved in aqueous waste. One commenter presented calculations on the basis of which it was suggested that the control level concentration for organic wastes could be raised to 1,000 ppmw with no increase in emissions. Another commenter argued that organic wastes are already adequately controlled under the RCRA and that control by subpart FF was redundant.

The EPA has always acknowledged that when benzene is dissolved in organics, it is much less volatile than benzene in aqueous waste at the same concentration. This is a major reason why the benzene in organic wastes that are not mixed with aqueous wastes is excluded from the TAB calculation in the rule. However, the benzene in organic wastes can contribute to benzene emissions and risk, and further, if organic wastes are not controlled at facilities with TAB's at or above 10 Mg/yr, attainment of the NESHAP risk goals could be jeopardized. Therefore, the EPA concluded that organic wastes should not be excluded from control at facilities with TAB's at or above 10 Mg/yr. The rule promulgated on March 7, 1990 reflected this conclusion.

In the preamble to the final rule in the March 7, 1990 **Federal Register** notice, the EPA also responded to commenters on the original proposed rule (proposed on September 14, 1989) who had commented that other regulations promulgated under the Clean Air Act and other Federal statutes (including the RCRA) already adequately controlled benzene emissions from waste operations. In its response, the EPA explained in detail why existing regulations are not adequate for controlling benzene emissions from benzene waste operations (see 45 FR 8321, March 7, 1990). These reasons are still valid.

After reviewing information submitted by commenters on the proposed rule amendments and other information, the EPA still believes, as discussed below, that organic wastes can be a source of significant benzene emissions and risk and, therefore, should be subject to control at facilities above the threshold for applicability of controls. In addition to the concentration of benzene in a waste and its volatility in that medium, potential benzene emissions and risk are also affected by the quantity of the waste and the manner in which the waste is managed. Commenters did not address these factors.

Although no information on the quantity of organic wastes managed at facilities subject to subpart FF was submitted by commenters on the proposed rule amendments, information supplied by facilities to comply with the reporting requirements of the original rule (in § 61.357) suggests that the quantities of organic wastes, and the benzene contained in them, may be substantial. For example, in a report summarizing the regulatory status of each waste stream submitted as required in § 61.357(a) of the original rule, one facility reported over 42,000 Mg of slop oil containing less than 10 percent total water. The average benzene reported for this organic waste was 500 ppmw, which yields an annual benzene quantity of 21 Mg/yr. Another facility reported a waste that was 19 percent benzene with a benzene quantity of almost 20 Mg/yr.

With these large amounts of benzene in organic wastes, it is critical that they be properly managed or else significant benzene emissions may result. If they are managed in covered tanks, benzene emissions can be minimal. However, if at some point the wastes are managed in tanks, aerated units, or heated units (for

example, to break emulsions) that are uncontrolled for air emissions, the benzene emissions would be much higher than if the waste is managed only in covered tanks. In addition, if the waste is splash loaded into open containers several times before final disposition or recycle, much of the benzene could be emitted.

Once a facility is subject to the control requirements of the rule on the basis of the benzene in their aqueous wastes, organic wastes are also subject to control. Organic wastes are eligible for the exemption from control promulgated in today's final rule amendments for wastes containing up to a total of 2.0 Mg/yr of benzene. However, because the potential benzene emissions and risk associated with organic wastes in certain waste management scenarios could be significant, the EPA continues to believe that organic wastes not meeting other exemption criteria in the rule should be controlled for air emissions.

At the same time, the EPA also believes that due to the acknowledged lower volatility of benzene contained in organic wastes, the level of control required for organic wastes does not need to match the level of control required for aqueous wastes. The EPA considered the suggestion by commenters to establish a control threshold specifically for organic wastes based on a benzene concentration of 1,000 ppmw. However, this suggestion puts no limit on the quantity of wastes below the control threshold or on how these wastes are managed. Consequently, if this suggestion were adopted, there could be no assurance that potential benzene emissions would be limited below a level that would not jeopardize attainment of the NESHAP risk goals. On this basis, the commenters' suggestion was rejected.

As an alternative, the EPA has retained the concentration threshold for control for all wastes at 10 ppmw benzene, but has established separate control requirements for organic wastes that have not been mixed such that they become aqueous. Considering the lower volatility of benzene contained in organic wastes and the typical fate of these wastes (generally returned to a process or incinerated), the EPA has determined that controls that suppress benzene emissions are adequate for organic wastes.

Organic wastes are managed primarily in tanks and containers. The existing requirements in the rule for containers are for covers only (unless treatment occurs in the container, in which case a closed-vent system and control device are also required) and, therefore, no change is necessary. For tanks, however, the original rule required a fixed-roof plus a closed-vent system and control device (or the alternative controls for tanks described in § 61.351). Based on the considerations discussed above, the final rule amendments promulgated today include separate requirements for tanks in which organic wastes are managed. These separate requirements, in § 61.343(b) of the amended rule, specify that under certain conditions, a tank in which organic wastes are managed need only be equipped with a fixed roof. The vapor pressure and tank size cutoffs from the new source performance standards for volatile organic liquids in storage tanks (subpart Kb of 40 CFR part 60) have also been adopted in § 61.343(b) as additional eligibility criteria for the less stringent control requirements for tanks. For tanks above these size and vapor pressure cutoffs, the control requirements in the originally promulgated subpart FF are reasonable and typical. Most organic wastes will have vapor pressures below the specified limits or be managed in tanks smaller than the size cutoffs. Therefore, the vapor pressure and tank size cutoffs should not limit the utility of this new provision.

The new provisions for the management of organic wastes in tanks also include language that limits the conditions under which tank venting to the atmosphere may occur (see § 61.343(b)(3)). This language, in effect, means that tanks in which wastes are agitated, treated, or heated must also be equipped with a closed-vent system and control device.

B. Alternative Control Devices

Two comments were received on the proposed amendments to § 61.349 regarding alternative control devices. The original rule (§ 61.349(a)) specified requirements for closed-vent systems and control devices used to comply with the rule's control requirements. Requirements were specified for enclosed combustion devices, vapor-recovery systems, and flares. The EPA proposed to amend this section to allow owners and operators to use alternative control devices, provided that it is demonstrated, prior to the installation of the alternative device, that it will achieve 95 percent control of organic compounds or 98 percent control of benzene.

One commenter supported the proposed amendment as a positive one that would provide flexibility and provide a means to make the rule more cost effective. However, this and another commenter were also concerned that the language of proposed § 61.349(a)(2)(iv)(E) could be interpreted to mean that an alternative control device could not be operated until approval was received from the EPA Administrator. The commenters claimed this interpretation could discourage use of this provision and the development of innovative controls. The commenters suggested options to limit the time available to the Administrator for approval or denial of an alternative device or to allow operation of an alternative control device during the approval period, with the risk that if approval is denied, a facility may be cited for violation for the period it operated the device.

It is the EPA's intent that the performance of an alternative control device be demonstrated and that information documenting that a device will meet the requirements of the rule be submitted before it is installed and operated.

If facilities were prohibited from installing and operating alternative control devices before approval is received from the Administrator, the EPA agrees that owners and operators could be discouraged from attempting to develop and use alternative control devices. However, this is not the case. After the documentation has been submitted to the EPA, the owner or operator may install and operate the device before receiving the EPA's approval. Nevertheless, the owner or operator may be subject to enforcement action beginning from the time the control device began operation. For example, if the EPA disapproves of the device, the facility may be cited for violation for the period it operated the device. Even if the EPA approves of the use of the device, an owner or operator may not have operated the device in accordance with § 61.349 for a portion of the time period before approval was granted. In such a case, the EPA may cite the facility for a violation during that period.

The EPA considered placing a limit in the rule on the time available to the EPA to review information submitted on alternative control devices and to issue approval or denial. However, the review of each device proposed will be different, and the level and complexity of information that will be submitted to document performance cannot be predicted. For this reason, the EPA concluded that it is not reasonable to limit the amount of time available to the EPA to review the information submitted and to issue approval or denial.

The EPA does not, however, want concern about the possible time-

required to receive approval from the EPA to discourage the development of alternative control devices that will meet or exceed the performance requirements of the rule. This was the EPA's original intent, but apparently, it was unclear in the language proposed. Therefore, the EPA has included language in the rule that will allow owners and operators at their risk to install and operate alternative control devices, pending approval by the Administrator, provided information and data on the device have been submitted as required by the rule. If an owner or operator chooses to install and operate an alternative control device prior to receiving approval and the EPA determines that the control device did not achieve the emission limitations or was not properly operated, the owner or operator may be cited for noncompliance with subpart FF during the period after the compliance date that the device was operated.

C. Other Comments on Control Requirements

The EPA received comments on the proposed amendment to § 61.349(a)(1)(ii) that would allow, as an alternative to flow indicators required in the original rule, the use of car-seals to indicate the position of any valves that might be used to divert the flow of emissions from a control device. One commenter supported the proposed amendment, and suggested that small connections (e. g., low-point drains and high-point bleeds) on the closed-vent system be excluded from requirements for flow indicators, car-sealed valves, and recordkeeping. Another commenter suggested plugging, capping, or blinding as an alternative to car-sealed valves for some vents and drains installed for maintenance around control devices.

The EPA believes that it is essential that air pollution control systems installed to meet the rule be equipped such that it can easily be determined if emissions are being routed to a control device. Any opening that allows emissions to by-pass a control device for an extended period of time can be a potential source of significant air emissions. It is the EPA's intent that routine opening of potential avenues of control device by-pass be prevented and monitored. It should be pointed out, however, that not all openings are prevented. Openings such as emergency venting of pressure relief devices are permitted to prevent physical damage to the closed-vent system and control device. Opening of low-point drains as described by the commenter would also be allowed as long as the drain does not permit diversion of the vent stream away from the control device.

Flow indicators and car-sealed valves provide easily observable visual evidence that control systems are not being by-passed, are widely used in industry, and are required in other NESHAP. These devices also provide recordable evidence that emissions may be escaping, whereas plugs and caps can be removed with no evidence visible that emissions are actually escaping. Although plugging and capping can be effective in controlling fugitive emissions that result from equipment leaks when used in combination with valves, the commenters do not make a strong argument why these would be as effective as flow indicators or car seals in demonstrating the integrity of a closed-vent system, especially without the valve before the cap or plug. For these reasons, § 61.349(a)(1)(ii) is not changed from proposal.

The EPA also received comments on the need for dilution air to prevent explosive mixtures in the headspace of waste management units. The EPA agrees with the commenters and the final rule has been amended to allow the addition of dilution air into waste management units that are maintained at less than atmospheric pressure. Facilities must do annual monitoring to demonstrate no detectable emissions from the opening. Also, the pressure must be monitored continuously to ensure that the pressure remains below atmospheric pressure.

One commenter asked the EPA to recognize that there are equipment cleaning and waste removal activities that are not feasible to control, and requested that these be excluded from the control requirements of the rule. Examples cited were routine pipe, strainer, and equipment cleaning; and tank and vessel cleaning.

When tanks and other equipment are opened for cleaning, the emissions from the tank opening are not covered by subpart FF. However, cleaning activities generate wastes subject to subpart FF. If the wastes have 10 ppmw or greater benzene, then the wastes must be controlled and treated in accordance with the rule. To simply exempt these wastes from control without any cap that would limit potential emissions would jeopardize attainment of the NESHAP risk goals. Therefore, these activities are not, by definition, exempted from the control requirements of the rule.

However, the EPA has included an option in the rule amendments promulgated today, as described in the next section of this preamble, that is specifically designed to provide an option for facilities to exclude from control wastes that contain benzene in small quantities, such as those cited by the commenter. Under this option, in § 61.342(c)(3), owners and operators may exclude wastes containing up to a total of 2.0 Mg/yr of benzene from the control requirements of the rule. There are no limits on which wastes are eligible. The EPA believes that with this option, and other compliance options provided in the rule as amended, owners and operators have flexibility in deciding which waste streams to control while the EPA limits the maximum possible emissions.

Since proposal of the clarifying rule amendments, questions have been submitted to the EPA concerning the definition of "water seal controls" in § 61.341 of the rule. Water seal controls are identified as acceptable controls for drains and junction boxes in the alternative standards for individual drain systems specified in § 61.346(b).

In the original rule, "water seal controls" is defined as "a seal pot, p-leg trap, or other type of trap filled with water that has a design capacity to create a water barrier between the sewer line and the atmosphere." The EPA has been asked if the examples cited in this definition are the only acceptable types of water seal controls. Other potential types of water seal controls identified by questioners were flooded sewers and baffle plates on junction boxes that extend to below the liquid surface.

The objective of the controls specified for drains and junction boxes in an individual drain system is to isolate them such that the free flow of vapors within the system is prevented. The examples cited in the original definition of water seal controls in the rule were not intended to be limiting. Other types of seals that achieve this objective are also acceptable. More specifically, flooded sewers are an acceptable control technique for individual drains and junction boxes, provided that the liquid level in the seal is maintained in the vertical leg of the drain. A baffle plate is an acceptable control for a junction box, provided each plate extends below the liquid level. In the final rule amendments, additional examples of acceptable controls have been added to the definition of water seal controls in § 61.341 to clarify this point. It is also clarified that for all water seals for drains, the water level must be maintained in the vertical leg of the trap for it to be considered a water' seal.

V. Additional Exemption for Small Benzene Quantity Wastes

Numerous commenters addressed the proposed additional option for

exempting wastes that contain small quantities of benzene from the control requirements of the rule. The EPA proposed (in § 61.342(c)(3)) that wastes containing a total of up to 1.0 Mg/yr of benzene, on an annual basis, could be exempted from control, with certain restrictions. The proposed restrictions on the use of this exemption option were that (1) the annual quantity of benzene in any waste stream exempted under this provision, except for process wastewater, could not exceed 25 kilograms per year (kg/yr); (2) if this option were elected by a facility, it would be as an alternative to the low-flow or mass quantity cutoffs for process wastewater in § 61.342(c)(3); and (3) tank drawdown and wastes from purging prior to sampling ("sample purge") would not be eligible for the proposed exemption.

In general, commenters supported the concept of providing an additional option in the rule for exempting small benzene quantity wastes from control. However, numerous commenters objected to the proposed limits on the use of the option. Commenters also requested that the EPA raise the amount of benzene that can be exempted from 1.0 to 2.0 Mg/yr. Some commenters argued that there should be no limit on either the quantity or type of streams that could qualify for the exemption, as long as the cap on the total amount of benzene was not exceeded. Other commenters specifically requested that the restrictions placed on tank drawdown and sample purge be removed. One commenter suggested that tank drawdown should not be excluded from the proposed exemption option if the tank drawdown were equipped with an oil/water monitoring device that can detect the presence of hydrocarbon in the water phase and automatically close the tank draw. Some commenters requested additional clarifying language in the regulation on which wastes would not be excluded from the proposed option.

After reviewing the comments submitted, the EPA has concluded that providing an additional option for exempting small benzene quantity wastes from the control requirements of the rule is still appropriate. However, in the final rule amendments, several changes have been made to the proposed exemption option based both on an assessment of the comments and on concerns the EPA has related to the tracking of wastes exempted under this provision. These are discussed below.

Specifically, the 25 kg per stream quantity limit and the exclusion of tank drawdown and sample purge from eligibility in the proposed exemption provisions have been removed. The cap on total benzene that may be exempted has also been raised to 2.0 Mg/yr.

The EPA's intent in proposing the additional exemption option was to expand the range of options available to owners and operators in seeking the most cost effective control strategy at each facility that must install controls to comply with the rule. In developing the proposed amendments, concerns related to tank drawdown and sample purge led the EPA to propose that these wastes would not be eligible for the new small quantity benzene exemption. Specifically, the volume and benzene content of waste streams generated through tank drawdown are highly dependent on the techniques of individual operators, making the monitoring of compliance by enforcement agencies difficult for these streams. Sample purge is required to be controlled under certain conditions by other NESHAP applicable to facilities also subject to subpart FF, and the EPA did not want to imply that the requirements of other standards would be overridden by allowing sample purge to be excluded from control under subpart FF.

Commenters argued forcefully that the restrictions proposed on use of the exemption option and the 1.0 Mg/yr of benzene proposed cap could severely limit its utility. After weighing these arguments against the EPA's earlier concerns, as discussed below, the EPA concluded that to accomplish its goal of providing a viable additional option for exempting small benzene quantity wastes, there should be no limits on which waste streams are eligible for the exemption. Further, a reevaluation of the cap indicated that the NESHAP risk goals would still be met if the cap were raised to 2.0 Mg/yr. The increase to 2.0 Mg/yr does allow benzene emissions to increase but it would not allow any facility to exceed one in ten thousand and it still results in significant reductions in population exposed to greater than one in one million risk. Thus, in the final rule amendments, any stream is eligible as long as the total benzene in all streams exempted under this provision is less than 2.0 Mg/yr.

As in the proposal, however, if this option were elected by a facility, the facility would not also be able to take advantage of the low-flow or mass quantity cutoffs for process wastewater in § 61.342(c)(3). Further, any facility electing to comply with the alternative compliance option for the rule would not also be able to exempt streams from control under the small quantity exemption options (please see section VI of this preamble).

Although the restrictions proposed for the exemption option have been removed in the final rule amendments, the EPA remains concerned about the potential for facilities to underestimate the quantity of benzene in an exempted stream. Incorrect determinations could cause the actual risk to be higher than the risk associated with 2.0 Mg/yr if the incorrect determinations result in greater than 2.0 Mg/yr of benzene in exempted wastes.

This is of particular concern for tank drawdown. As mentioned previously, the quantity of tank drawdown waste generated during each tank water draw and the benzene content of this waste is determined by individual operators and can be highly variable. Further, tank drawdown can be a multiple phase waste, making determination of the average benzene concentration difficult and subject to error. These factors make the quantity and benzene concentration of tank drawdown highly variable and difficult to predict. This creates a significant potential for the benzene in these wastes to be severely underestimated by facilities. Although less variable than tank drawdown, the quantity and benzene concentration of other small quantity wastes can also be difficult to predict.

Due to the variability in tank drawdown, the difficulty inherent in estimating the benzene content of these and other small quantity wastes, and without the restrictions on use of the option that were in the proposal, the EPA believes that it is critical that wastes exempted under this option be tracked separately and be easily identifiable by enforcement agencies. Facilities subject to subpart FF generally must already identify and characterize all benzene-containing waste streams in order to prepare the initial and annual reports required by the rule summarizing the regulatory status of each waste stream. For the purpose of tracking wastes exempted under § 61.342(c)(3), this general requirement has been clarified in the final rule amendments to specify that waste streams exempted under § 61.342(c)(3) must be separately identified in these reports. Further, the mass of benzene in these streams must be separately totaled to demonstrate compliance with the 2.0 Mg/yr benzene limit. Finally, although owners and operators are still allowed to use knowledge of the waste to estimate the concentration of benzene in these streams, it is clarified in the rule that the Administrator may require measurements to verify estimated concentrations in the case of disputes.

Due to the concerns the EPA has about tank drawdown, the suggestion by

a commenter to require a device that would automatically shut off tank draw when organic material is detected was considered. A device such as this could minimize the amount of tank drawdown waste generated by eliminating the potential for operator error. The EPA did not, however, adopt this suggestion. While at least one facility has found shut-off devices helpful in controlling tank drawdown, these devices are not widely demonstrated to be technically feasible. In addition, the cost of equipping all tanks that must be controlled under this rule with these devices may be prohibitive. Consequently, the commenter's suggestion was not adopted in the final rule amendments.

It should be noted that although the exemption option in the final rule amendments contains no restrictions on which streams may be exempted under this provision, this does not override the requirements of other NESHAP that may require control of specific streams. In particular, subpart L, applicable to coke by-product recovery facilities, and subpart J, applicable to equipment leaks of benzene, contain requirements to control benzene emissions during sampling that apply under conditions specified in those standards.

VI. Alternative Compliance Options

In the March 5, 1992 notice of proposed rulemaking, the EPA specifically solicited suggestions from the public for other structures for the rule, including supporting information, that would encourage reclamation and recycling without compromising attainment of the NESHAP risk protection goals (57 FR 8022). The EPA stated that any rule structures suggested would be considered as an alternative compliance option to the structure of the rule originally promulgated on March 7, 1990.

In the notice of proposal, the EPA set forth several criteria that must be met for suggested alternative rule structures to be considered. First, the supporting information submitted must clearly describe the suggested structure and level of protection it would provide. Secondly, any structure suggested should address the benzene emission concerns including, but not limited to, characterizing and assuring adequate control of the benzene emissions that would result from aqueous waste treatment processes, nonaqueous wastes, treatment residuals, or materials sold offsite. Thirdly, the structure should be generic in that it should be able to be applied at any facility and result in achievement of the NESHAP risk protection goals. The proposal specifically stated that the EPA was not seeking suggestions for structures based on site-specific control or risk protection. The last criterion for suggested structures was that any structure suggested should be one that can be developed and evaluated for the level of protection it provides within the timeframe of this rulemaking.

A. Compliance Options Suggested by Commenters

In response to the EPA's request in the notice of proposal, several alternative compliance options were suggested by commenters. Four general types of options were suggested. These can generally be described as (1) site-specific risk assessment, (2) emissions averaging, (3) a structure based on other existing rules that would not require calculation of TAB, and (4) treat to a target benzene quantity in waste. The suggestions made by commenters are referred to as compliance options rather than alternative rule structures because they would not change the fundamental way that facilities become subject to the control requirements in the rule, but rather would provide an alternative way to comply with these requirements.

There were also commenters who argued that the EPA should not promulgate any alternative compliance options, but require all facilities subject to the rule to comply with the rule as originally structured. These commenters contend that for the EPA to provide a more cost effective compliance option at this time would reward those facilities that did not meet the original schedule for compliance and penalize those facilities that did comply on schedule with the original rule by putting them at a competitive disadvantage.

After consideration of these comments and additional analysis, the EPA determined that a treat to a target benzene quantity compliance option would best meet the criteria set forth in the notice of proposal. Consequently, an alternative compliance option of this type is included in the final rule amendments promulgated today. A brief discussion of each compliance option suggested by commenters, and the rationale for selecting the compliance option promulgated today, is presented below.

As noted earlier, the EPA is publishing an ANPR in the **Federal Register** announcing the EPA's intent to propose for public comment an additional compliance option based on site-specific risk assessment.

Site-Specific Risk Assessment

Several commenters suggested that the EPA should allow any facility above the facility control applicability threshold of 10 Mg/yr TAB to conduct a site-specific risk assessment to demonstrate either that controls were not needed or that controls less than mandated by the rule would meet the NESHAP risk goals. Although suggested by several commenters, site-specific risk assessment as an alternative compliance option does not meet two of the criteria set forth in the March 5, 1992 notice of proposed rulemaking. As noted earlier, the EPA's solicitation of suggestions for alternative rule structures specifically stated that the EPA was not seeking suggestions for structures based on site-specific control or risk protection. The suggestion of site-specific risk assessment as an alternative compliance option clearly does not meet this criterion. Further, it was stated in the March 5, 1992 notice of proposed rulemaking that any structure suggested should be one that could be developed within the timeframe of this rulemaking (i.e., by today's date). Due to the need to resolve risk assessment policy issues and to prepare guidance for both facilities and regulatory agency personnel on how to conduct and evaluate risk assessments for benzene waste sources, the development of an alternative compliance option for subpart FF involving site-specific risk assessment would have been impossible within the timeframe of this rulemaking. For these reasons, site-specific risk assessment was not considered by the EPA as a viable alternative compliance option to be included in the rule amendments promulgated today.

Emissions Averaging

Three commenters suggested that control strategies involving benzene emissions averaging, or "bubbling," across all benzene emission sources at a facility, be allowed by the EPA as a compliance option for subpart FF. Commenters contend that at some facilities, reductions in benzene emissions from sources not covered by subpart FF (e.g., process vents or vehicles) can be achieved at less cost than controlling low-flow, low-concentration benzene waste streams. Further, commenters argue that the EPA should not be concerned about which sources at a facility are controlled if the total benzene emission reduction achieved at the entire facility is equivalent to what would have been achieved with controls as specified in the rule for benzene waste sources.

One suggestion made by commenters to implement emissions averaging is for the EPA not to change the language of § 61.353 of the rule, "Alternative Means of Emission Limitation," as proposed in

the March 5 notice. Commenters contend that without the proposed change, the EPA may approve emissions averaging strategies under this section. Emissions averaging was also indirectly suggested by other commenters who criticized the proposed change to § 61.353 as limiting consideration of emissions to those "from the source."

The EPA does not view emissions averaging as suggested by commenters to be a viable candidate for promulgation at this time as an alternative compliance option for subpart FF. Similar to the compliance option based on site-specific risk assessment suggested by other commenters, emissions averaging does not meet the criteria set forth for an alternative rule structure for subpart FF in the March 5 notice. Emissions averaging is also an inherently site-specific compliance option that would require consideration and analysis by the EPA of proposals from facilities on a case-by-case basis, with each proposal based on the unique characteristics of benzene emission sources at individual plants. Further, some commenters suggest that they be allowed to control benzene emissions from sources outside of the scope of applicability of this rule as an alternative to controlling some benzene waste sources. This raises regulatory and other issues that cannot be resolved within the timeframe of the current rulemaking. For these reasons, the EPA did not select emissions averaging as an alternative compliance option for subpart FF at this time.

The change proposed to § 61.353 by the EPA was to correct an inadvertent omission of language that would make this section consistent with the language of the General Provisions to part 61. Based on the decision not to adopt emissions averaging as an alternative compliance option for Subpart FF at this time, § 61.353 is promulgated in today's rule amendments as proposed.

Compliance Option Based on Other Existing Rules That Would Not Require Calculation of TAB

One commenter suggested an alternative compliance option incorporating the requirements of other new source performance standards (NSPS) and NESHAP, that, if elected by a facility, would not require a facility to perform or document the calculation of TAB. This commenter claimed that the control requirements of subpart Kb of part 60, and subparts Y, V, and BB of part 61 would, for example, provide adequate emissions limitation if also applied to low-concentration benzene waste streams. The commenter provided detailed regulatory language to implement this suggestion and contended that this alternative compliance option would be widely used by industry and would result in equal or better emissions reduction at a much lower cost to both industry and government agencies as a result of more uniform regulatory provisions.

For several reasons, the EPA did not adopt this suggested alternative compliance option in the final rule promulgated today. One of the criteria set out in the proposal notice is not met in that the commenter provided no estimates of benzene emissions and risk associated with the suggested alternative, and not enough information was submitted for the EPA to make these estimates. There are substantive differences in the technical requirements in the suggested regulatory language provided by the commenter as compared to the requirements in subpart FF (and in the proposed amendments) that could jeopardize attainment of the NESHAP risk protection goals. For example, the regulatory language suggested by the commenter exempts from control all waste streams that contain less than 10 kg/yr of benzene, with no cap on total mass of benzene exempted.

Also, there are no requirements in the suggested regulatory language that facilities keep records of the quantity and benzene concentration individual waste streams or of how wastes are managed. The EPA views the identification and tracking of wastes through proper recordkeeping as an essential element of the original rule and of any alternative compliance option. The need to keep records of wastes subject to the rule is particularly critical for wastes claimed to be exempt from control by owners and operators on the basis of low benzene concentration, benzene quantity, or under other compliance options provided in the rule. Without recordkeeping requirements to identify, characterize, and track the management of these wastes, there can be no assurance that the requirements of the rule are met.

The EPA disagrees that other NSPS and NESHAP provide adequate emission limitation for waste streams. Although many aspects of the control requirements of subpart FF are very similar to the control requirements of other rules, there are distinct differences in the sources and materials covered by each rule that warrant separate standards. This was discussed in the EPA's response to a similar comment submitted when subpart FF was originally proposed (see 55 FR 8321, March 7, 1990).

Although the commenter claimed that the suggested alternative compliance option would be widely used, there was no evidence supplied supporting this contention. Based on the considerations discussed above, and given the time and resources that would be required to evaluate all elements of the commenter's suggested regulatory language, the EPA did not adopt this commenter suggested alternative compliance option in the final rule amendments.

One motivation for the commenter's suggested alternative appears to be to avoid the calculation of TAB. The EPA does not view the requirement that TAB be calculated by sources affected by the rule as overly burdensome. As described in § 61.355, direct measurement of flow rate and benzene concentration of waste streams is not required, although it is acceptable. For example, the flow rate of wastes through a waste management unit can be determined based on the unit's maximum design capacity, and the concentration of benzene in a waste stream can be determined based on knowledge of the waste. Further, the initial calculation of TAB should have already been completed by facilities since its promulgation on March 7, 1990. The amendments promulgated today do not substantively change the way TAB is calculated. Therefore, the resubmission of the TAB calculation and the periodic update of the TAB calculation by facilities as required in today's final rulemaking should require minimal additional expenditures beyond what is required to characterize changes since the last update.

Treat to a Target Benzene Quantity

Four commenters suggested that the rule should include an alternative under which facilities could treat only those streams necessary to lower the total benzene in waste to a specified target level. Three commenters, without providing any details of how such an option would be implemented, suggested that the target level should be 10 Mg/yr, the same as the TAB threshold in the rule for facility control.

In the most detailed description of an alternative compliance option of this type, one commenter suggested that only the benzene in wastes not recycled or recovered should be counted in the calculation of TAB. Materials sent offsite for recycling or resale would also not count towards facility TAB provided that these wastes were not exposed to the atmosphere. Coupled with the TAB calculation that would exclude recycled, recovered, or resold materials, this commenter suggested that the facility applicability threshold be

lowered to 6 Mg/yr in the alternative compliance option. The commenter claims that his suggested compliance option would encourage pollution prevention approaches and estimates that typically 40 percent of the benzene waste contained in refinery waste streams is technologically capable of being reclaimed or recycled.

The EPA agrees that an alternative compliance option based on a target benzene quantity would encourage recycling and reclamation. Further, it meets the criteria set out in the March 5 notice for an alternative structure. However, there are two concerns about the specifics of the suggestions made by commenters. First, as noted above, some commenters suggested that the target level should be equal to the facility threshold control level, based on TAB, of 10 Mg/yr. The EPA stated in the preamble to the proposed rule amendments published on March 5, 1992, and in the preamble to the final rule issued March 7, 1990, that the 10 Mg/yr control threshold was not intended to be a target level, and that a target level, if established, would need to be less than 10 Mg/yr to guarantee attainment of the NESHAP risk protection goals.

Second, the descriptions of the treat to a target alternatives suggested by some of the commenters imply that if a facility met the target level, then it would not be subject to the monitoring, reporting, and recordkeeping provisions of the rule. Facilities would, in effect, be able to "treat out" of the rule. Because facilities above the 10 Mg/yr TAB control threshold level have been identified as potentially not meeting the NESHAP risk protection goals if controls are not installed, operated, and maintained properly, the EPA believes that all facilities subject to control requirements should also be subject to monitoring, reporting, and recordkeeping requirements.

Based on the considerations described above, the EPA has developed and included in the final rule amendments promulgated today an alternative compliance option based on treatment to a target benzene quantity. The proposal solicited alternative compliance options that would encourage reclamation and recycling. This structure is conceptually based on responses of commenters to that solicitation, with specific variations to address concerns of the EPA.

B. Description of Alternative Compliance Option Selected by the EPA for Promulgation

As discussed above, the EPA selected treat-to-a-target benzene quantity as the format for an alternative compliance option. This compliance option is available to facilities who are subject to the control requirements of the rule. To demonstrate compliance under this new alternative, a facility determines its benzene quantity. The facility benzene quantity is determined by summing the mass of benzene in all aqueous wastes subject to the rule at the point where each waste first enters a waste management unit that is not controlled for air emissions to at least the same degree required by §§ 61.343 through 61.348(a). The benzene in wastes that are aqueous at their point of generation and the benzene in wastes that become aqueous through mixing are included in the target benzene quantity. Wastes that are organic (and remain organic) must be managed in controlled units under this option. The facility target benzene quantity alternative compliance option is an alternative within the general standards. A facility choosing this option is not allowed to use the process wastewater exemption or the 2.0 Mg/yr small benzene quantity exemption.

To determine the target benzene quantity level for this alternative, the EPA used the same modeling and exposure analysis performed to support development of the original rule. The analysis indicated that a target benzene quantity of 6.0 Mg/yr, even under reasonable worst-case assumptions, would meet the NESHAP goals for maximum individual risk and total population risk.

In the final rule amendments, the alternative compliance option is set forth in § 61.342(e). Under this provision, the owner or operator may choose to control or treat any combination of aqueous waste streams that contain benzene provided that the target benzene quantity is maintained below 6.0 Mg/yr. Organic wastes are required to be managed in units controlled for benzene air emissions as they would be without the target benzene quantity alternative compliance option.

The rule specifies that under this alternative compliance option, the target benzene quantity is calculated by summing the mass of benzene in all waste streams managed in units that do not comply with §§ 61.343 through 61.348(a). The mass of benzene is determined at the point of generation for a waste stream if the first unit in which the waste is managed is not equipped with air emission controls as specified in the rule. If the first unit after the point of generation is controlled, the mass of benzene in each waste stream is determined at a point before the waste enters the first unit that is not controlled for benzene air emissions in accordance with §§ 61.343 through 61.348(a).

The EPA recognizes that in some waste management scenarios, wastes may be mixed in ways that could result in multiple counting of benzene in the determination of the target benzene quantity. For example, where controlled and uncontrolled wastes are combined in a controlled unit and then later managed in an uncontrolled unit, the benzene quantity determined in the resultant stream would contain benzene previously counted toward the target benzene quantity, since, as described in this example, some of the wastes were managed in uncontrolled units prior to combination. In this situation, the final rule requires that the total benzene quantity in the combined stream be determined to count towards the target benzene quantity. However, if this approach results in a benzene quantity that exceeds the 6.0 Mg/yr target benzene quantity, and a portion of the benzene has previously been included in the benzene quantity, the benzene quantity determined for the combined stream may be corrected to not double count the portion of the benzene that had been counted previously. In this correction, losses of benzene due to emissions, removal, or destruction in management units prior to the determinations for the combined streams shall be calculated and considered in the target benzene quantity. All calculations must be documented.

Similar to the determination of facility TAB, the benzene in all materials that meet the definition of waste in the rule and that contain 10 percent or more of water (or that are combined with other streams such that they contain 10 percent or more of water) must be included in the target benzene quantity determination except for those materials exempted from all aspects of subpart FF in § 61.340(c). Wastes transferred offsite must also be included in the target benzene quantity determination. For the purpose of determining the target benzene quantity, the benzene in an aqueous waste managed entirely in units uncontrolled for air emissions is counted at the waste's point of generation. The benzene in an aqueous waste managed in units equipped with air emission controls is counted at the point where the waste enters the first waste management unit not controlled for air emissions to the level required by the applicable control requirements of §§ 61.343 through 61.348(a). The benzene in an aqueous waste that is treated to reduce benzene is counted after the treatment device when the

waste first enters a unit not controlled to the level required by §§ 61.343 through 61.348(a), provided that the treatment device and the units in which the waste is managed prior to treatment are controlled for air emissions. If each waste stream entering an enhanced biodegradation unit is less than 10 ppmw on a flow-weighted annual average basis and all prior units are controlled, then the benzene entering the enhanced biodegradation unit is not included in the determination.

Organic wastes (i.e., those containing less than 10 percent water) are not included in the target benzene quantity unless they are mixed with other materials such that they become aqueous. For example, the benzene in an organic waste managed in a wastewater system not controlled to the level required by §§ 61.343 through 61.348(a) where the waste becomes mixed with aqueous waste is included in the target benzene quantity based on the benzene content of the waste at its point of generation or if an organic waste is managed in controlled units, where the waste enters the first unit not controlled to the level required by §§ 61.343 through 61.348(a).

However, the control requirements for organic wastes that remain organic during waste management are still applicable under this alternative. That is, organic wastes containing 10 ppmw or greater of benzene must be managed in units equipped with air emission controls to the level required by subpart FF. Further, an owner or operator who selects this alternative compliance option may not also take advantage of any other compliance option in the rule under which wastes may be exempted from control such as the option for exempting wastes containing up to 2.0 Mg/yr of benzene in § 61.342(c)(3).

There are three key differences in how the benzene quantity is determined under the new alternative compliance option as opposed to how facility TAB is determined. First, as already mentioned under the target benzene quantity alternative compliance option, if a waste stream is continuously managed beyond the point of generation in waste management or treatment units equipped with air emission controls, benzene concentration and quantity are not determined at the waste's point of generation, as would be done for TAB, but at a point before the waste enters the first unit not controlled to the level required by §§ 61.343 through 61.348(a). Second, the benzene in remediation wastes, which is not included in TAB, is included in the target benzene quantity determination. Third, the benzene in process unit turnaround wastes, which may be averaged over the period between turnarounds in the calculation of TAB, is included in the target benzene quantity determination in the year in which the wastes are generated.

Remediation wastes are not included in the calculation of TAB to not discourage voluntary remediation actions by facilities whose TAB's are below 10 Mg/yr by not subjecting them to the control requirements of the rule. Since treatment to lower TAB is not allowable, these facilities have no options that would keep the remediation wastes from possibly affecting facility applicability.

In contrast, the target benzene quantity alternative compliance option is an optional means of compliance available to facilities determined to be subject to the control requirements of the rule. Facilities have flexibility to take actions (such as treating wastes) that affect the calculation of the benzene quantity that they do not have with TAB. Due to the flexibility available under the target benzene quantity alternative compliance option, the EPA believes it is appropriate that the benzene in all aqueous wastes, including the benzene in aqueous remediation wastes, be included in the benzene quantity.

Similarly, the benzene in process unit turnaround wastes may be averaged over the period between turnarounds in the calculation of TAB due to a facility applicability concern, namely to reduce the impact on small facilities whose TAB would go above 10 Mg/yr only in years that turnaround occurs if averaging were not allowed. With the flexibility provided under the target benzene quantity option, a facility may treat process unit turnaround wastes if necessary to keep its benzene quantity below 6.0 Mg/yr. Considering this flexibility, the EPA sees no need to provide an averaging option for process unit turnaround wastes under the target benzene quantity alternative compliance option.

A facility that selects the target benzene quantity alternative compliance option must also account for wastes that are sent offsite. The benzene in wastes sent offsite that contain 10 percent or more of water at their point of generation counts towards the target benzene quantity of the facility from which the waste is transferred (e.g., the generating facility). The benzene quantity of these wastes is determined at the point before the waste enters the first unit that is not controlled according to §§ 61.343 through 61.348(a). This point may be at the offsite facility provided that documentation of the benzene quantity is obtained from the offsite facility and the documentation also indicates that the waste is managed in controlled units up to the point the benzene quantity is determined. The benzene in wastes that are input to another process at an offsite facility may be counted as zero in the determination of target benzene quantity for the generating facility, provided the waste is managed in units controlled according to §§ 61.343 through 61.348(a) prior to reentering a process and documentation is obtained. A generating facility without documentation from the offsite facility determines benzene quantity of these wastes at the point where the waste leaves the generating facility, assuming the waste is managed in units controlled according to §§ 61.343 through 61.348(a) up to that point. All organic wastes sent offsite must also be controlled at the receiving facility in units that meet subpart FF control requirements, and documentation of these controls must be obtained by the generating facility.

Similar to the notification requirements in the rule for other wastes required to be controlled under subpart FF that are sent offsite, the rule requires the generator to include, with each shipment of waste that must be controlled under the target benzene quantity alternative compliance option, a notice to the receiving facility indicating that the waste is subject to subpart FF and how it must be controlled at the offsite facility.

The target benzene quantity alternative compliance option is also available to a TSDF that is subject to the control requirements of subpart FF because the facility has a TAB of 10 Mg/yr or greater. However, any wastes received by the TSDF that have been designated for control under a generator's compliance plan under §§ 61.342(e) or (f) are not eligible for less stringent control at the TSDF under the target benzene quantity compliance option.

As noted earlier, the EPA held several meetings following proposal of the clarifying amendments to discuss possible alternative compliance options for subpart FF with representatives of individual companies, trade associations, and an environmental group. At these meetings, the EPA presented a tentative description of the target benzene quantity alternative compliance option.

Following these meetings, members of industry suggested that streams containing less than 10 ppmw benzene not be included in the determination of benzene quantity. However, no information was submitted on the total

mass of benzene in these streams, or on their impact on their contribution to facility benzene emissions and risk.

The EPA intended that the target benzene quantity alternative compliance option encompass all waste streams managed at a facility, including those containing less than 10 ppmw of benzene. This provides the maximum degree of flexibility to owners and operators in choosing a compliance approach while still limiting benzene emission to ensure that the NESHAP risk goals will be met. For example, an owner or operator may find that it is more cost effective to treat certain high volume waste streams containing less than 10 ppmw benzene than controlling numerous other low volume streams, such as maintenance wastes, containing higher concentrations of benzene. The target benzene quantity alternative compliance option would allow this.

Further, the benzene in all waste streams, including the benzene in less than 10 ppmw benzene streams, was counted towards the benzene quantity in the analysis that identified 6.0 Mg/yr as a target benzene quantity level that would meet the NESHAP risk goals. If streams containing less than 10 ppmw of benzene were to be excluded from the target benzene quantity, the target level would be substantially lower than 6.0 Mg/yr to ensure that the NESHAP risk protection goals would be met. For these reasons, the benzene in waste streams with less than 10 ppmw benzene must be included in benzene quantity as it is determined under the final rule amendments.

VII. Monitoring, Recordkeeping, and Reporting

Comments were received on specific monitoring, recordkeeping, and reporting requirements included in the proposed clarifying amendments. In addition, general comments on the reporting and recordkeeping burden associated with the entire rule were received. These comments and the EPA's responses are presented below.

A. Proposed Clarification on Monitoring Requirement for Wastewater Treatment Systems

In the March 5, 1992 notice, the EPA proposed that § 61.354(b) of the rule be changed to require that the flow rate and benzene concentration of each stream entering the first unit not controlled for air emissions (an "exempt unit") be continuously monitored, except for biodegradation units. For each enhanced biodegradation unit that is the first exempt unit in a treatment train, it was proposed that the benzene concentration of waste streams entering the unit be continuously monitored. These changes were proposed to make the § 61.354(b) monitoring requirements consistent with the control requirements for wastewater treatment systems complying with § 61.348(b). Section 61.354(b) in the original rule required monitoring of the flow rate of each wastewater stream exiting the wastewater treatment system. The EPA's intent, as explained in the preamble to the proposed clarifying amendments, was that monitoring be conducted of both the flow rate and benzene concentration of streams entering the first exempt unit, and of the benzene concentration of streams entering enhanced biological treatment units.

Numerous commenters objected to the proposed change to § 61.354(b). Many commenters stated that the continuous monitoring of benzene in waste streams is unduly expensive. Cost estimates cited by commenters ranged from $300,000 capital costs for an entire plant to over $350,000 for each waste stream. One commenter estimated that between 10 and 40 analyzers would be necessary at the typical refinery, resulting in annual costs ranging from $3.5 million to $14 million for continuous benzene monitoring at a single facility.

Some commenters argued that monitoring requirements were unnecessary. Others suggested that other less frequent techniques, such as periodic grab sampling, would provide information comparable to continuous monitors.

After an evaluation of the comments received and further investigation, the EPA has revised the monitoring requirements for wastewater treatment systems in § 61.354(b) in the final rule amendments. Monitoring of the flow rate and benzene concentration of the streams entering the first exempt unit is required, as well as monitoring of the benzene concentration of the streams entering an enhanced biological treatment unit. However, the proposed requirement for continuous monitoring has been deleted. Instead, monthly determinations are required.

Since compliance with the wastewater treatment system provisions of § 61.348(b) is based on a determination of the total mass of benzene in streams entering exempt units, and the benzene concentration of streams entering both exempt units and enhanced biological treatment units, the EPA believes that monitoring of these parameters is reasonable and appropriate. Although compliance is based on annual flow rates and annual average benzene concentration of streams managed in the wastewater treatment system, monitoring of these parameters on a more frequent basis will track fluctuations in flow rate and concentration. Data obtained through this monitoring will provide an early indication of whether compliance will be achieved on an annual basis and allow owners and operators to make changes in process or waste management operations if necessary.

Although, for these reasons, the EPA believes that monitoring is reasonable and appropriate, further investigation of the cost of continuous monitoring systems led the EPA to agree with commenters that the costs of these systems outweigh the benefits for the purposes of this rule. Vendor estimates obtained by the EPA of the capital cost of a system to continuously monitor benzene concentration ranged from $40,000 to $125,000 per stream monitored. In addition to the initial cost of the system, maintenance costs can be significant. For example, the EPA estimates that the annual costs of the weekly calibration required could be about $10,000 per monitoring device. While these costs are lower than those estimated by commenters, the EPA considers these costs to be high when compared to other available options.

The EPA believes that for the purposes of monitoring compliance with § 61.348(b), monthly determinations of benzene concentration and flow rate are adequate. Units that are expected to be exempt from control are likely to be near the end of the wastewater treatment system, after the mixing of many waste streams and management in units that tend to dampen out variation in flow and concentration. Therefore, frequent fluctuation in the benzene concentration is not expected. This sampling frequency is consistent with the requirements contained in § 61.354(a) for monitoring the effluent from waste treatment systems. Therefore, in the final rule amendments, § 61.354(b) requires monthly monitoring using grab sampling to determine benzene concentration and the procedures of § 61.355(b) to determine flow rate.

Some comments on the monitoring requirements for wastewater treatment systems complying with § 61.348(b) suggested misunderstanding of the EPA's intent. For example, many commenters focused only on the need to monitor benzene concentration. These commenters are reminded that under § 61.348(b), there are two criteria that must be met before a waste management unit is exempt from control. A unit does not have to be equipped with benzene air emission controls if (1) the benzene content of each stream entering the unit

is less than 10 ppmw benzene on a flow-weighted annual average basis, and (2) the total annual benzene quantity contained in all waste streams managed in exempt units in the wastewater treatment system is less than 1 Mg/yr. To determine if the second criterion is met, the flow rate of streams must be estimated and hence the need to monitor this parameter as well as benzene concentration.

Misunderstanding is also evident in comments made on the number of waste streams that must be monitored, and on the costs associated with monitoring these streams. Wastewater treatment systems typically are comprised of a combination of waste management units (e.g., oil/water separators, DAF units, equalization basins, activated sludge tanks, and clarifiers) configured in series to form a wastewater treatment train. Facilities typically have one treatment train, although larger plants may have two parallel trains. Prior to entering a wastewater treatment system, individual wastewater streams are normally combined to facilitate treatment in a treatment train. The intent of proposed § 61.354(b) is to monitor the benzene concentration and flow of this combined wastewater stream at the point where it enters the first exempt unit in a treatment train. This requirement should require a limited number of monitoring devices. Commenters who claimed that many streams would have to be monitored apparently misinterpreted § 61.354(b) to mean that the flow and benzene concentration of each waste stream that is eventually combined and managed in an exempt unit in a wastewater treatment system must be monitored at its point of generation. This is not a correct interpretation of the rule. Monitoring of the combined stream at the point where it enters an exempt unit is what is intended.

B. Maintenance Turnaround Plan

In the notice of proposal, the EPA asked for comments on several aspects of the proposed requirement for a maintenance turnaround plan in § 61.356(m) (see 57 FR 8023).

Several commenters argued that because maintenance turnaround wastes were already subject to the control requirements of the rule at facilities with a TAB of 10 Mg/yr or greater, the requirement for a plan to minimize air emissions from maintenance turnaround wastes at these facilities was redundant and unnecessary. The recordkeeping burden associated with preparing a plan was criticized as excessive by some commenters who requested a reduction in the level of detail required. One commenter said that the language of the proposal preamble suggested that a separate plan would be required for each turnaround and asked that it be clarified that a single generic plan was required at a facility.

Many commenters asked that the proposed requirement that the maintenance turnaround plan be in the plant operating record by the effective date of the rule amendments be modified such that the plan was not required until 60 to 90 days before turnaround actually occurs. One commenter supported the need for a maintenance turnaround plan in conjunction with a suggested alternative compliance option.

The maintenance turnaround plan, as proposed, has been interpreted to apply to benzene emissions generated during activities associated with process unit turnarounds. However, subpart FF is intended to apply only to the wastes generated by process unit turnarounds. The EPA considers the turnaround activities, even though they generate the wastes, to be part of process unit operations, rather than waste management operations.

The EPA considered all of the comments on the turnaround plan and has deleted the plan from the requirements. Because wastes generated during a turnaround are subject to the requirements of the rules, there is an incentive for facilities to minimize the amount of wastes generated. Wastes that are generated must be accounted for in the TAB determination. Further, not all wastes generated during turnarounds require control due to the small quantity exemptions and the alternative compliance option. Finally, there appears to be some confusion over the scope of the plan. For these reasons, the EPA has deleted the requirement for the process unit turnaround plan in the final rule amendments.

C. Other Comments on Monitoring, Reporting, and Recordkeeping

Comments were also received on other aspects of the monitoring, reporting, and recordkeeping requirements of the rule. These are discussed below.

Several comments were received on the monitoring, reporting, and recordkeeping requirements associated with wastes that are sent offsite by a generator to a TSDF. One commenter stated that no rationale had been presented by the EPA for requiring the generator to include a notice with wastes shipped offsite that they must be managed and treated to meet subpart FF. Another commenter claimed that the inspection, monitoring, recordkeeping and reporting requirements will be a heavy burden for handlers of a large number of containers such as drums that are filled once and then sent to a TSDF. This commenter proposed an alternative that would allow initial monitoring of containers for detectable emissions after the containers are filled. Containers certified to have no detectable emissions would be labeled as such. No additional monitoring or inspection of these containers would be required until the containers were reopened.

These comments are outside of the scope of the proposed clarifying amendments. Further, they are not questions for clarification; rather they are requests to change the original rule requirements.

Commenters noted that § 61.357(d)(1) in the proposed amendments requiring a compliance certification "within 90 days after March 5, 1992" was in error. The proposed language of this section should have read "within 90 days after (date of promulgation of clarifying amendments)." A notice was issued by the EPA on May 20, 1992 (57 FR 21368) to correct this error.

One commenter suggested that if there have been no changes to a report previously submitted that summarizes the regulatory status of each waste stream (as described in proposed § 61.357(a)) then only a statement that the previous report is still valid should be required, rather than the submission of a copy of the previous report. The EPA agrees with the commenter on this point and § 61.357 has been amended as suggested.

One commenter stated that there should be no reporting requirements for facilities that do not have any benzene in process or waste materials. The EPA views the reporting requirements in the rule for these facilities as minimal and necessary. Chemical plants, petroleum refineries, coke by-product recovery plants, and TSDF that receive wastes from these industries are subject to subpart FF. Under § 61.357(a), a facility subject to subpart FF that has no benzene onsite in wastes, products, by-products, or intermediates is required to submit only a statement to this effect. The EPA believes that this minimal reporting is necessary to identify all plants potentially subject to the rule and to differentiate those facilities that must install controls from those that do not have to install controls. Therefore, there is no change to this requirement from proposal.

Two comments were received by the EPA on recordkeeping and reporting requirements promulgated in the original rule for subpart FF, although

the EPA did not propose changes to these requirements in the clarifying rule amendments. Commenters requested that the EPA consider the overlap of recordkeeping and reporting requirements under subpart FF with recordkeeping and reporting requirements under the new standards developed under Section 112 of the Clean Air Act as amended in 1990, including, in particular, the proposed NESHAP for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Seven Other Processes NESHAP. One commenter recommended specifically that the EPA require reporting for subpart FF on a semiannual basis to be consistent with the new operating permit program requirements (57 FR 32250).

In the clarifying amendments, the EPA did not propose any change to the recordkeeping and reporting requirements of the original rule. These requirements were proposed on September 14, 1989, and opportunity for public comment occurred at that time. The EPA responded to comments on the proposed recordkeeping and reporting requirements in the notice of final rulemaking issued on March 7, 1990 (see 55 FR 8318). Therefore, these comments on the original recordkeeping and reporting requirements are outside the scope of this rulemaking. However, one of the commenters requested corrections of some errors in the cross-referencing in the rule requirements and also suggested minor changes. The EPA made the suggested corrections and minor changes to the recordkeeping and reporting requirements and they do not change the burden associated with the recordkeeping and reporting.

One commenter claimed that hundreds of hours per year per response would be required to collect information necessary to comply with the reporting and recordkeeping requirements of subpart FF as opposed to the EPA's estimate of 11.9 hours per response. This commenter claimed that additional review is called for under the Paperwork Reduction Act.

The estimate of 11.9 hours per response presented in the preamble to the proposed clarifying amendments is for the information collection requirements in the proposed amendments, and not for the information collection requirements of the entire rule. The information collection requirements of the original rule were approved by the Office of Management and Budget at the time the original rule was promulgated. Based on changes to the clarifying amendments since proposal, the public reporting burden for the rule amendments has been reestimated and is presented in the next section of this preamble.

VIII. Policy for Granting Waivers of Compliance

Owners and operators of existing sources subject to a NESHAP promulgated under the Clean Air Act prior to the 1990 Clean Air Act Amendments must be in compliance with the rule within 90 days of the rule's effective date, unless a waiver of compliance is granted by the Administrator. The period for a waiver may not exceed 2 years beyond the effective date of the rule. For a NESHAP, the effective date is the date of promulgation in the **Federal Register**.

To resolve confusion about subpart FF, the EPA chose to stay the effectiveness of the rule while clarifying amendments were developed. The effective date for the amended rule is today's date, and existing sources must be in compliance within 90 days of today's date unless a waiver of compliance is granted by the Administrator.

The owner or operator of an existing source unable to come into complete compliance with the NESHAP for existing waste operations within 90 days of the effective date of this rule may apply for a waiver of compliance in accordance with the procedures described in 40 CFR §§ 61.10 and 61.11. One requirement of those provisions is to demonstrate that the additional time is necessary for the installation of controls. In addition, as the EPA stated in the March 5, 1992 proposal, the EPA believes that it is essential that the risk to human health from benzene emissions be mitigated. The EPA believes that the best way to mitigate the benzene emission reductions that will be lost due to delayed compliance during the waiver period is to reduce benzene emissions elsewhere at the facility. However, in some instances it may not be technically or economically feasible to achieve such benzene emission reductions. Accordingly, in the preamble to the proposed rule, the EPA indicated that it would consider various other types of environmentally beneficial activities that could be credited (on a discounted basis) towards the mitigation goal. In the preamble to the proposed rule amendments, the EPA set forth a hierarchy of activities (see 57 FR at 8026).

One commenter objected to the broad degree of available mitigation options. The commenter expressed concern over the ability of the EPA to determine whether the mitigation made up for the lost benzene emission reductions where the mitigation included emission reduction of nonhazardous air pollutants, nonair emission reductions and nonquantifiable pollution reduction projects. The commenter requested that only benzene emissions be credited for mitigation or at least that mitigation be limited to reductions of other hazardous air pollutants with a weighting factor included.

The EPA understands the concern about the uncertainty in equating one type of emissions reduction with a reduction of another pollutant or in another media, and, as a result, the final mitigation policy is somewhat narrower than outlined in the proposed rule.

It remains the EPA's policy that a source should seek to reduce other benzene emissions first, where such reductions are technically and economically feasible. However, because of (1) the unique nature of this rule; (2) the efforts made thus far by sources seeking to comply with the benzene waste NESHAP; (3) the relatively short period of time that remains for submitting waiver applications; (4) the conditions for granting a waiver are more restrictive than announced in the proposal notice; and (5) the departure set forth herein is consistent with efforts to resolve litigation brought by both environmental and industry parties, the EPA is providing opportunities to achieve the mitigation goal through projects involving the reductions of pollutants other than benzene when projects to reduce benzene emissions are not technically and economically feasible.

Thus, the EPA has determined that a source seeking a waiver must determine and achieve its mitigation objective as follows. First, the source must determine the additional amount of benzene emissions that will be emitted to the air from emission points subject to subpart FF as compared with the emissions expected if the source complied with that standard without a waiver. Second, the source must multiply that amount by 1.5. This quantity, expressed in kilograms, becomes the source's mitigation goal. Then a source must identify how it will achieve that goal.

The EPA will continue to give the highest priority to obtaining reductions of other benzene air emissions to meet this mitigation goal. Thus, a source must include in its waiver application all emission reduction projects for benzene, where it is technically and economically feasible to achieve such benzene reductions. If a source undertakes a benzene project (having determined it to

be technically and economically feasible based on the benzene reductions to be achieved) that also achieves coincidental reductions of other hazardous air pollutants (HAP's) or volatile organic compounds (VOC's), the source may include as a mitigation credit those coincidental reductions on a discounted basis as described below.

If a source demonstrates that there are no other technically and economically feasible projects to reduce benzene emissions and that as a result of those projects it still cannot achieve its mitigation goal, the EPA will accept additional projects supplying reductions of other HAP's listed under section 112 of the Clean Air Act as amended in 1990 at a ratio of 1.1 kilograms of other such pollutants per kilogram of the source's unmet mitigation goal.

If a source demonstrates that emission reduction projects supplying sufficient reductions of other NAP's are not available, the EPA will accept additional projects resulting in reductions of VOC's, at a ratio of 2.2 kilograms of such pollutant per kilogram of the source's unmet goal.

Mitigation may not be credited if the reduction is to meet any other regulatory requirement. However, if a source achieves early compliance with some future regulatory requirement, it can be credited with the reductions which occur up to the time the requirement goes into effect.

Finally, the EPA will consider waiver applications for up to three projects involving reductions of sulfur oxides (SO_x), if the sources seeking these reductions demonstrate that adequate reductions of benzene, other NAP's, and VOC's are not available at their facilities. These sources must provide at least 2.2 kilograms of SO_x for each kilogram of credit towards the mitigation goal. The EPA believes it is appropriate to consider these projects in this case only because the planning for these projects may already be far advanced, and it may not be feasible for such sources to develop other mitigation projects in time to apply for a waiver.

The EPA is adopting the mitigation principles set forth above for this rule because of the reasons outlined above. The interpollutant provisions of this action do not establish any precedent for future actions.

For subpart FF, the EPA believes the waiver policy described in the March 5, 1992 notice of proposed rulemaking is a legitimate exercise of the Administrator's discretionary authority to grant waivers of compliance under section 112 of the CAA. This policy was discussed in the preamble to provide information to potential waiver applicants and not to indicate that the policy was part of the proposed rule amendments proposed for comment. The only requirement related to waiver applications in the proposed rule amendments was that waiver applicants include, with their applications under § 61.10, a plan that is an enforceable commitment to obtain environmental benefits to mitigate the benzene emissions that result from delayed compliance. This requirement is retained in the final rule. The criteria for judging whether an application for a waiver of compliance for subpart FF is acceptable have been established by the Administrator under his discretionary authority for granting waivers. These criteria are fully explained in the waiver guidance document prepared since proposal of the rule, as discussed in the following section.

A. Waiver Application and Review Process

A number of other comments addressed issues related to the waiver. Several commenters urged the EPA to make the waiver application and review process simple and expeditious. Some suggested that the rule require the EPA to make determinations within 30 or 45 days of receipt of an application. One commenter stated that the EPA had failed to substantively describe the waiver process. Another commenter urged the EPA to solicit industry comment during development of waiver guidance and to release the guidance as soon as possible.

The general waiver application and review process for NESHAP was previously established in §§ 61.10 and 61.11 of the General Provisions to part 61. Due to the special circumstances of subpart FF, and to expedite the application and review process for waivers under subpart FF, the EPA prepared a draft guidance document, "Benzene Waste Operations—NESHAP Waiver Guidance Document." This guidance document describes the waiver application and review process, articulates the policy to be followed by the EPA in reviewing waiver applications for subpart FF, and describes in detail the information that should be included in a waiver application for this rule, with examples provided. The draft guidance document was circulated to trade associations representing companies affected by subpart FF (including the commenter who stated that the EPA had failed to substantively describe the waiver process), and an environmental group for comment on the document's clarity and readability. The document will soon be published and made available to the public. The basic principles to be included in the document were outlined above. The EPA believes that this guidance document, plus the general procedures already established in §§ 61.10 and 61.11, will expedite the process for waiver approval to the extent possible for this rule. The EPA or the delegated authority will make every effort to review promptly all waiver applications. However, the EPA will not limit in advance the amount of time available for review as suggested by commenters because the EPA cannot anticipate with certainty such variables as the complexity of each application received (related to site-specific factors) and the number of applications that may be received by an individual EPA regional office or delegated authority.

One commenter asked the EPA to consider a less onerous, less detailed demonstration for granting a waiver of several additional months in cases where the control equipment is operating, but the monitoring, recordkeeping, and other procedural requirements are not yet in place.

The EPA believes that a situation in which a facility is able to be in compliance with all of the control requirements but is not able to comply with the monitoring and recordkeeping requirements is unlikely. However, if this situation were to arise, there is no reason to make the waiver application different. The basic information required relates to how and when the facility will be in compliance. The mitigation plan is based on the estimated benzene emissions that will be lost due to delayed compliance. In the situation described by the commenter, few, if any, benzene emissions may be required to be mitigated.

B. Mitigation Requirements

Several comments were received related to the proposed requirement that facilities submit, with a waiver application, a plan that is an enforceable commitment to obtain environmental benefits to mitigate the benzene emissions that result from extending the compliance date. One commenter argued that the waiver policy should not require offsetting mitigation actions because this requirement would penalize facilities that are taking additional time to implement comprehensive multimedia compliance programs. Finally, a commenter specifically supported allowing reductions of other pollutants and non-air media actions to count towards a facility's mitigation goal and pointed to other rules that require control of sources of benzene (other than benzene

waste sources) at coke by-product recovery plants, thus limiting the opportunity to reduce benzene air emissions from other sources at these facilities.

The granting of waivers of compliance by the EPA Administrator is discretionary. That is, the Administrator may grant a waiver of compliance, but is not obligated to do so. Nothing in the language of the statute limits the EPA's ability to make the granting of waivers for a particular rule conditional on terms that the Administrator, in his sole judgement, determines to be necessary for that rule.

One commenter, also a litigant on subpart FF, contends that they should not be required to provide for mitigating environmental benefits because their settlement agreement makes no mention of such a requirements. The commenter also contends that the waiver policy is inconsistent with the settlement statement that compliance waivers will be on a refinery-by-refinery basis.

The EPA disagrees with the commenter's contentions. The settlement agreement to which the commenter refers in no way precludes a requirement that the commenter (or any other source) obtain mitigating environmental benefits if it seeks a waiver of compliance following promulgation of the amendments to clarify 40 CFR part 61, subpart FF. Nor does it preclude any other condition of the waiver. The criteria and requirements for seeking a waiver will apply to all applicants. The settlement agreement merely provides that when considering whether to grant a waiver, it will not penalize the commenter for its good faith belief that its refinery was not subject to the standard when it was promulgated in 1990. Requiring it to obtain mitigation for the benzene emissions that will be lost during the pendency of the waiver period is not a penalty for the source not achieving compliance by March 1992; rather, it is a condition for a waiver beyond the new effective date of the revised subpart FF standard.

The settlement agreement addresses the question of whether the EPA would find that an applicant is making every effort to comply with the standard but that it is unable to comply by the compliance date where it did not make any effort from March 1990 to December 1991 because it did not think it was covered by the rule. The settlement agreement made clear that the EPA would not penalize the commenter because prior to the signing of the settlement it believed that it was not subject to the standard. It did not purport to provide the commenter special treatment vis-a-vis all other sources with respect to the requirement to undertake mitigation to make up for the benzene emissions lost if a waiver is granted.

Finally, the waiver policy is not inconsistent with the statement that the waiver applications will be considered on a refinery-by-refinery basis. In 1990, when the EPA promulgated subpart FF, it granted a 2-year compliance waiver to all sources affected by the rule. It did not require each source individually to make the demonstration of need for a waiver as required by 40 CFR 61.10. In contrast, the EPA wanted to make clear that this time it would not issue a generic waiver. Rather, each source seeking a waiver must file its own request for a waiver; each application will be considered on its own merits. The language cited by the commenter can in no way be read to suggest that there would be different criteria for waivers for different sources or that some sources would not be required to provide mitigating environmental benefits.

One commenter contends that the EPA lacks the statutory and regulatory authority to require waiver applicants to provide mitigating environmental benefits in the absence of a finding that such conditions are necessary to protect the health of persons from imminent endangerment.

Section 112(c)(1)(B) of the Clean Air Act (CAA), prior to passage of the Clean Air Act Amendments of 1990, provides that the Administrator may grant a waiver if he finds additional time is necessary for installation of controls and that "steps will be taken to assure that the health of persons will be protected from imminent endangerment." The regulations implementing this statutory waiver provision further provide that the Administrator may "[s]pecify any additional conditions which the Administrator determines necessary * * * to assure protection of the health of persons during the waiver period" (40 CFR 61.11(a) (4)).

This regulatory provision is very broad and affords the Administrator wide discretion in granting waivers. Waivers themselves are available at the discretion of the Administrator; no source is entitled to a waiver. The EPA believes this broad regulatory authority affords the Administrator the discretion to condition a waiver on an assurance that the source will undertake activities to benefit the environment and to protect human health. The mitigation policy that seeks, in the first instance, to obtain other benzene air reductions, is an effort to effectuate the waiver provisions in 40 CFR 61.11.

The opportunity to mitigate, and thereby protect human health and the environment, by reducing pollutants other than benzene air emissions, was an effort to provide a source an opportunity to satisfy the conditions of 40 CFR 61.11 where it was not feasible to otherwise reduce benzene emissions at a particular facility.

C. Special Requirements for Waiver Applicants Awaiting Development of a Compliance Option Based on Site-Specific Risk Assessment

As previously noted, the EPA is planning to propose an additional compliance option for subpart FF based on site-specific risk assessment. Owners or operators who plan to use this option, if it becomes available, are eligible to apply for waivers of compliance. The EPA plans to take final action on the additional compliance option by August 1993.

Mitigation goals and credits under the waiver policy must be calculated based on a plan to comply with subpart FF, as amended by today's final rulemaking, and not based on using the alternative compliance option. If an additional compliance option is promulgated, facilities may modify the enforceable commitment to reduce the mitigation goal, based from that date forward on lost benzene emission reductions under the new compliance option. However, the goal for mitigation of lost benzene emission reductions, based on the amended rule promulgated today, that occurred prior to the effective date of the new compliance option, shall not change.

Waiver applications by applicants awaiting the development of an additional compliance option should reflect a two-phase compliance path. The first phase would outline how compliance will be achieved with a site-specific risk assessment-based compliance option. In the first phase of the waiver application, the applicant shall demonstrate how, and on what schedule, compliance under this option would be expeditiously achieved. This phase of the compliance path would not have to show installation of control equipment necessary for compliance with §§ 61.343 through 61.349 of subpart FF, if that control equipment would not be required under a compliance option based on site-specific risk assessment.

The second phase of the compliance plan shall document, how the applicant will comply with §§ 61.343 through 61.349 of subpart FF, as amended by today's final rulemaking. This compliance path would then be implemented by the applicant if a

compliance option based on site-specific risk assessment is not promulgated (presently final action is scheduled for August 1993, as discussed above).

Finally, applicants awaiting development of an additional compliance option for subpart FF should recognize that they will not receive additional time beyond the waiver period for compliance, and that waiver period shall not extend more than 2 years beyond the effective date of today's amended rule.

IX. General

A variety of comments in addition to those discussed in previous sections were received in response to the proposal of clarifying amendments to subpart FF. These additional comments, and the EPA's responses are discussed below.

A. Risk Assessment Supporting the Original Rule

Many comments were received criticizing the EPA's risk assessment that was performed to support development of the original rule promulgated on March 7, 1990. This risk assessment had been performed to demonstrate both that the original rule was necessary and that the NESHAP risk protection goals would be met under the final rule. Several commenters claimed that the original analysis was flawed because the model used grossly overstates emissions and risk. Some commenters stated that benzene emission estimates for specific sources were overestimated in the analysis. These commenters stated that the risk assessment should be redone using more recent exposure models developed by the EPA and incorporating more site-specific information. A few commenters had performed their own risk assessments for several facilities and claimed that the results showed controls were not needed to the level required by the rule.

These commenters incorrectly assumed that with the proposal of clarifying amendments to subpart FF, the EPA was reopening the entire rule, and the original analyses supporting it, to further public comment and possible change. To the contrary, the amendments proposed were narrow in scope, designed to clarify only those specific points on which there had been confusion following promulgation of the original rule. They also were designed to provide additional flexibility to owners and operators who must comply with the control requirements of the rule.

The appropriate time for comments concerning the technical basis of the original rule was following proposal of the rule on September 14, 1989 (54 FR 38083). The need for the controls required by the rule was discussed in the preamble to the proposed rule and the technical analyses supporting the proposed rule were placed in the docket prior to proposal and were available for public review. Comments received on the need for the rule and the analyses supporting the rule were carefully considered, and changes in the analyses and the rule were made as appropriate before promulgation of the final rule on March 7, 1990.

In the notice of final rulemaking, the EPA presented thorough and extensive responses to comments on the risk assessment methodology used to evaluate sources of benzene wastes and other sources of benzene emissions (see 55 FR 8301 to 8307). The proposal of clarifying amendments does not reopen those parts of the rule unaffected by the amendments (and the technical analyses supporting them) for public comment.

B. Costs of Controls

Several comments were received claiming that the EPA had understated the costs of the benzene waste NESHAP. Commenters stated that the capital cost of complying with the rule is several billion dollars based on industry surveys. Because of this, commenters say the benzene waste NESHAP is a major rule and that a Regulatory Impact Analysis (RIA) must be performed. One commenter stated that this rule is a prime candidate for review under the President's regulatory review initiative.

As discussed earlier, the proposal of clarifying amendments to subpart FF did not reopen the entire rule for public comment. While it is possible that the EPA may have underestimated the cost of complying with subpart FF as originally promulgated, it is also possible that facilities may be overstating the cost of compliance. Many facilities subject to subpart FF are implementing multi-media compliance strategies designed to meet the requirements of many regulations to control pollution, including subpart FF. The EPA believes that these facilities, in some cases, may be overstating the portion of total compliance costs that are attributable to subpart FF.

Under Executive Order 12291, an RIA is required if the economic impacts of a rulemaking would exceed $100 million. The rule amendments clarify, but do not change, the basic requirements of the rule. Therefore, there is no additional compliance cost associated with the rule amendments. The clarifying amendments promulgated today include additional options for compliance. The additional options provided would reduce the cost of complying with subpart FF at some facilities. Hence, any impact of the rule amendments on the costs of complying with subpart FF would be to reduce compliance costs.

The EPA therefore believes that the costs associated with the rule amendments do not exceed the $100 million threshold, the amendments will not significantly increase process or production costs, and the amendments will not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets. Consequently, the rule amendments do not constitute a major rule and an RIA is not required.

Further, the EPA also views the rule amendments as consistent with the President's regulatory review initiative. A primary objective of the regulatory review initiative is to improve the clarity of regulations. The amendments to subpart FF are designed to clarify provisions of the original rule and, therefore, are consistent with this objective. The amendments are also consistent with the regulatory review initiative in that they provide additional options for compliance that (1) may be more cost-effective for some facilities; (2) encourage recycling, reclamation, and pollution prevention, and (3) encourage comprehensive multi-media compliance programs.

C. Legal Aspects

One commenter, a trade association, contends that it and its members' companies will have the right to obtain full judicial review of the total NESHAP when the final rule is issued.

The commenter is incorrect in this assertion. The assertion is without foundation in the law. The Clean Air Act limits the right to petition for judicial review of a rule to a 60-day period following publication of the final rule in the **Federal Register**:

> Any petition for review under this subsection must be filed within 60 days from the date notice of such promulgation, approval, or action appears in the **Federal Register**, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within 60 days after such ground arise.

CAA, § 307(b)(1), 42 U.S.C. 7607(b)(1).

The notice of proposed rulemaking issued on March 5, 1992 states throughout that it only proposes clarifying amendments and minor revisions to limited provisions of

subpart FF. The entire basis of the rule is not reopened. If commenters objected to the aspects of the rule when it was promulgated, then they had the opportunity to file a petition for review at that time. By making minor amendments to a few provisions of 40 CFR part 61, subpart FF, the EPA does not override the directives of section 7(b) and reopen the entire rule. Moreover, the one petitioner that did challenge the final rule negotiated a settlement agreement whereby the EPA committed to propose the clarifying changes set forth in the March notice. By issuing a final rule today that is consistent with those changes, the EPA has satisfied its obligations with respect to the settlement agreement. As a result, the petitioner, by terms of the settlement agreement, has committed to dismiss its original petition for review.

One commenter stated that the EPA may not apply these amendments to sources that already expended efforts to comply with the rule if the company used a good faith interpretation of the rules in developing its compliance plan. This commenter asked the EPA to provide a "grandfather" exemption from the amended rule for facilities that spent money in good faith and complied with the original rule by March 7, 1990. The commenter contends that under the holding of *United States* v. *Narragansett Improvement Company*, 571 F. Supp. 588 (D.R.I. 1983) it would be unlawful to apply the proposed amendments (once made final) to its facility.

The EPA commends the commenter for its efforts to achieve timely compliance with requirements of subpart FF when it was promulgated in 1990. Moreover, the EPA recognizes that there was substantial confusion about certain provisions of the rule following its promulgation. Indeed, as the EPA noted at the time it proposed clarifying amendments, the amendments were to help reduce the confusion. The intent and scope of the rule, however, remain essentially the same. The amendments promulgated today become part of the subpart FF requirements. Unless a source receives a waiver of compliance pursuant to 40 CFR 61.10 and 61.11, it must comply with the provisions of subpart FF, as amended, within 90 days of the effective date.

The application of these rules to an affected facility is not precluded by the decision on *United States* v. *Narragansett, supra*. In *Narragansett*, the court held that a regulation defining when certain reconstruction activity was subject to a new source performance standard could not apply to activity undertaken before the EPA had issued the regulation. In this situation, the EPA would not be seeking to retroactively apply the amended rule to the source. The source need only comply with the amended standard on the new compliance date. In *Narragansett*, the determination of whether a source was new was based on a one-time determination, which is made at the time the construction activity occurs. All the court said in *Narragansett* was that the regulations on the book at the time the facility undertook its construction activity was determinative of whether the source was new. Thus, subsequently promulgated regulations could not alter the determination of whether a particular activity triggered new source applicability. Here the EPA is not saying that the source should be in compliance with the revised standards as of the original compliance date of March 1992. Rather, the source must be in compliance with the amended rule as of the new compliance date.

Further, as stated in the March 5, 1992 notice of proposed rulemaking, the amendments do not change the basic requirements of subpart FF. Rather, they clarify the EPA's original intent on those provisions of the original rule where confusion was evident. By staying the rule while clarifying amendments were proposed and promulgated, the EPA provided additional time for facilities who did misinterpret the original rule to come into compliance. Facilities that correctly understood and complied with the requirements of the original rule previously should be in compliance with the amended rule.

D. Compliance Aspects

One commenter suggested that the EPA amend the proposal to extend the compliance date for the amended rule to March 1994 or to 1 year after the final amended rule is promulgated, whichever is later. This commenter said that this would prevent facilities from installing needless controls while uncertainty on the final rule still exists. Another commenter asked the EPA to announce that it will allow sufficient time for compliance after the final amended rule is issued to allow the use of possible alternative approaches.

The compliance time available to existing facilities following promulgation of a NESHAP under the Clean Air Act prior to the 1990 Clean Air Act Amendments is established by law as 90 days from the effective date of a rule, unless a waiver of compliance is obtained (see section 112(c)(1)(B) of the Clean Air Act as amended in 1977). The effective date of a NESHAP is the date of promulgation.

Subpart FF was originally promulgated on March 7, 1990. The original rule provided a blanket waiver of compliance to facilities such that controls were to be installed no later than March 7, 1992. Prior to March 7, 1992, subpart FF was stayed pending final action by the EPA on clarifying amendments to the rule. In a settlement agreement with litigants on subpart FF, the EPA committed to taking final action on clarifying amendments to the rule by December 1, 1992.

Given that the effectiveness of subpart FF was stayed until final action was taken on the clarifying amendments proposed March 5, 1992, the EPA does not believe that there is the need to take the unusual step of issuing a blanket waiver of compliance for subpart FF as amended. Therefore, the compliance date for the amended rule is 90 days from today's date unless a waiver of compliance is obtained. Applications for waivers of compliance will be considered on a case-by-case basis by the Administrator according to §§ 61.10 and 61.11 of the General Provisions to 41 CFR part 61.

Finally, a commenter stated that if the TAB of a facility goes below the control threshold of 10 Mg/yr in the future, the facility should only be required to continue to comply with the rule provisions for facilities with comparable TAB's (i.e., below 10 Mg/yr).

The EPA agrees with this comment. If, at some point in the future, a facility's TAB (as determined according to the rule) is reduced to below 10 Mg/yr, then the facility would no longer be subject to the control requirements of the rule, but must continue to comply with the reporting and recordkeeping requirements. This was allowed in the original rule and is still allowed under the amended rule. The commenter is reminded, however, that while means such as benzene waste minimization are acceptable to reduce facility TAB, waste treatment is not acceptable to reduce TAB.

E. Points for Sampling and Analysis

One commenter claimed that the proposed rule language could cause confusion on where the benzene concentration of treated waste streams should be determined. This commenter asked that it be stated in the rule that if the treatment standards of § 61.348(a) are met, then the determination is made at the exit of the treatment process.

The EPA agrees with the commenter on this point. It is the EPA's intent that, for the purpose of demonstrating compliance with the standards for treatment processes in § 61.348(a), benzene concentration should be

determined at the exit of the treatment process. This regulatory language can be found in § 61.355(d).

Another commenter recommended that the rule provide flexibility on sampling locations for waste streams at a plant already determined to have a TAB above 10 Mg/yr. The commenter cited cases where, due to safety concerns, it was preferable to sample at a common collection point to which wastes had been hardpiped, rather than at the point of generation.

Although it is not clear from the comment what the purpose for the sampling described is (e.g., to compute TAB or demonstrate that a stream contains less than 10 ppmw benzene and, therefore does not have to be controlled), the EPA believes that the rule provides the flexibility that the commenter is recommending. To calculate TAB for a facility requires that the annual mass of benzene in each waste stream at its point of generation be estimated. The mass of benzene in each stream is estimated through a determination of benzene concentration and waste quantity. The determination of benzene concentration and waste quantity through direct measurement at the point of generation is not required by the rule for the purpose of estimating facility TAB, but is an acceptable option.

To determine waste quantity, historical records or the maximum design capacity of the waste management unit handling the waste may also be used (see §§ 61.355(b) (5) through (7)). To determine benzene concentration (for TAB or for other purposes), use of knowledge of the waste is acceptable (see § 61.355(c)(2)). Direct measurement of benzene concentration at a location other than the point of generation may be used to support a determination based on knowledge of the waste.

Facilities acknowledging that they are above the 10 Mg/yr threshold for the applicability of control requirements will not be expected to document their estimate of TAB as rigorously as those who are claiming they are below 10 Mg/yr and therefore do not need to apply controls. However, facilities claiming that either the entire facility or individual waste streams within the facility are exempt based on the results of sampling of waste streams at locations other than their point of generation will be expected to document that benzene concentration has not been reduced through dilution or volatilization.

In case of disputes, the Administrator may require direct measurement of waste characteristics at the point of generation. However, in cases where facility applicability is not an issue (i.e., at facilities over 10 Mg/yr on the basis of other streams), evidence such as that suggested by the commenter would likely be acceptable to support a TAB calculation.

Finally, a commenter requested that the rule specify that a Method-27 leak test is an acceptable alternative to Method 21 for trucks and rail cars.

Under § 61.345, the cover and all openings of containers in which benzene-containing wastes subject to the control requirements of the rule are managed must be designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, initially and thereafter at least once per year by the methods specified in § 61.355(h) of the rule. Section 61.355(h) specifies EPA Reference Method 21. Section 61.355(h) was not affected by the proposed amendments and, therefore, it was not appropriate for the EPA to change this section in the final rule without proposal and comment. However, an owner or operator may request that the Administrator approve the use of an alternative method under § 61.13 of the General Provisions to 40 CFR part 61.

F. Requests for Site-Specific Clarifications

Two comments were received requesting determinations on how the rule would apply to their specific facilities. One commenter requested clarification of the definition of "petroleum refinery" as it applied to the commenter's facility. Another commenter requested a determination on how the rule would apply to part of a coke by-product recovery plant that is under separate ownership from the coke oven and the rest of the by-product recovery plant, where materials (including wastes) are hard piped between them.

The EPA considers these requests for site-specific determinations on the applicability of subpart FF to be outside of the scope of this rulemaking. Determinations on the applicability of the final rule to specific facilities will be made by the EPA Regional offices or delegated State or local agencies. Requests for site-specific clarifications should, therefore, be directed to the appropriate EPA Regional Office or delegated State or local agency.

X. Administrative Requirements

A. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in subpart FF under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0183. The OMB approved the requirement in the proposed clarifying amendments for a compliance waiver, but did not approve the proposed requirement for a maintenance turnaround plan. The promulgated rules do not include the requirement for a maintenance turnaround plan for the reasons stated in section VII. B. of this preamble.

The public reporting burden for the compliance waiver is estimated to be a one time burden of 15 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M St., SW.; Washington DC 20460; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of regulations on small business "entities." If a preliminary analysis indicates that a regulation would have a significant economic impact on 20 percent or more of small entities, then a Regulatory Flexibility Analysis must be prepared.

The amendments to 40 CFR part 61, subpart FF, are intended to clarify the rule and will not affect the number of facilities subject to the rule or the controls that must be installed to comply. I therefore certify that this rule will not have significant economic impact on a substantial number of small entities.

C. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated revisions, and the EPA's responses to significant

comments, the contents of the docket, ept for interagency review materials, l serve as the record in case of icial review (Section 307(d)(7)(A)).

D. Executive Order 12291

Under Executive Order 12291, the A is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements he Order. The EPA has determined t the clarifying amendments to subpart FF would result in none of the adverse economic effects set forth in tion I of the Order as grounds for ding a regulation to be a "major rule." The EPA does not believe these amendments to the regulation are major cause the economic effects of the endments do not meet the $100-million threshold, the amendments will not significantly increase process or oduction costs, and the amendments ll not cause significant adverse effects domestic competition, employment, investment, productivity, innovation, or mpetition in foreign markets.

The EPA has not conducted a RIA of s regulation because this action does not constitute a major rule.

st of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, tergovernmental relations, Mercury, dionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air llutants.

Dated: December 1, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the eamble, title 40, chapter 1, part 61 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 61 ntinues to read as follows:

Authority: Sections 101, 112, 114, 116, 301 of the Clean Air Act as amended (42 U.S.C. 01, 7412, 7414, 7416, 7601).

§ 61.340 [Removed]

2. In § 61.340, paragraph (c)(3) is moved.

3. Section 61.341 is amended by revising the definitions for "point of waste generation" and "water seal ontrols," and by adding definitions in lphabetical order to read as follows:

§ 61.341 Definitions.

* * * * *

Car-seal means a seal that is placed on device that is used to change the position of a valve (e.g., from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

* * * * *

Flow indicator means a device which indicates whether gas flow is present in a line or vent system.

* * * * *

Maximum organic vapor pressure means the equilibrium partial pressure exerted by the waste at the temperature equal to the highest calendar-month average of the waste storage temperature for waste stored above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for waste stored at the ambient temperature, as determined:

(1) In accordance with § 60.17(c); or

(2) As obtained from standard reference texts; or

(3) In accordance with § 60.17(a)(37); or

(4) Any other method approved by the Administrator.

* * * * *

Point of waste generation means the location where the waste stream exits the process unit component or storage tank prior to handling or treatment in an operation that is not an integral part of the production process, or in the case of waste management units that generate new wastes after treatment, the location where the waste stream exits the waste management unit component.

* * * * *

Process unit turnaround means the shutting down of the operations of a process unit, the purging of the contents of the process unit, the maintenance or repair work, followed by restarting of the process.

Process unit turnaround waste means a waste that is generated as a result of a process unit turnaround.

* * * * *

Sour water stream means a stream that:

(1) Contains ammonia or sulfur compounds (usually hydrogen sulfide) at concentrations of 10 ppm by weight or more;

(2) is generated from separation of water from a feed stock, intermediate, or product that contained ammonia or sulfur compounds; and

(3) requires treatment to remove the ammonia or sulfur compounds.

Sour water stripper means a unit that:

(1) Is designed and operated to remove ammonia or sulfur compounds (usually hydrogen sulfide) from sour water streams;

(2) has the sour water streams transferred to the stripper through hard piping or other enclosed system; and

(3) is operated in such a manner that the offgases are sent to a sulfur recovery unit, processing unit, incinerator, flare, or other combustion device.

* * * * *

Water seal controls means a seal pot, p-leg trap, or other type of trap filled with water (e.g., flooded sewers that maintain water levels adequate to prevent air flow through the system) that creates a water barrier between the sewer line and the atmosphere. The water level of the seal must be maintained in the vertical leg of a drain in order to be considered a water seal.

4. Section 61.342 is amended by revising paragraphs (a), (b), (c)(1) introductory text, (c)(1)(iii), (c)(2), (c)(3), and (d) introductory text; by redesignating paragraphs (e), (f), and (g) as (f), (g), and (h); and by adding paragraph (e) to read as follows:

§ 61.342 Standards: General.

(a) An owner or operator of a facility at which the total annual benzene quantity from facility waste is less than 10 megagrams per year (Mg/yr) shall be exempt from the requirements of paragraphs (b) and (c) of this section. The total annual benzene quantity from facility waste is the sum of the annual benzene quantity for each waste stream at the facility that has a flow-weighted annual average water content greater than 10 percent or that is mixed with water, or other wastes, at any time and the mixture has an annual average water content greater than 10 percent. The benzene quantity in a waste stream is to be counted only once without multiple counting if other waste streams are mixed with or generated from the original waste stream. Other specific requirements for calculating the total annual benzene waste quantity are as follows:

(1) Wastes that are exempted from control under §§ 61.342(c)(2) and 61.342(c)(3) are included in the calculation of the total annual benzene quantity if they have an annual average water content greater than 10 percent, or if they are mixed with water or other wastes at any time and the mixture has an annual average water content greater than 10 percent.

(2) The benzene in a material subject to this subpart that is sold is included in the calculation of the total annual benzene quantity if the material has an annual average water content greater than 10 percent.

(3) Benzene in wastes generated by remediation activities conducted at the facility, such as the excavation of contaminated soil, pumping and treatment of groundwater, and the recovery of product from soil or groundwater, are not included in the calculation of total annual benzene

quantity for that facility. If the facility's total annual benzene quantity is 10 Mg/yr or more, wastes generated by remediation activities are subject to the requirements of paragraphs (c) through (h) of this section. If the facility is managing remediation waste generated offsite, the benzene in this waste shall be included in the calculation of total annual benzene quantity in facility waste, if the waste streams have an annual average water content greater than 10 percent, or if they are mixed with water or other wastes at any time and the mixture has an annual average water content greater than 10 percent.

(4) The total annual benzene quantity is determined based upon the quantity of benzene in the waste before any waste treatment occurs to remove the benzene except as specified in § 61.355(c)(1)(i) (A) through (C).

(b) Each owner or operator of a facility at which the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr as determined in paragraph (a) of this section shall be in compliance with the requirements of paragraphs (c) through (h) of this section no later than 90 days following the effective date, unless a waiver of compliance has been obtained under § 61.11, or by the initial startup for a new source with an initial startup after the effective date.

(1) The owner or operator of an existing source unable to comply with the rule within the required time may request a waiver of compliance under § 61.10.

(2) As part of the waiver application, the owner or operator shall submit to the Administrator a plan under § 61.10(b)(3) that is an enforceable commitment to obtain environmental benefits to mitigate the benzene emissions that result from extending the compliance date. The plan shall include the following information:

(i) A description of the method of compliance, including the control approach, schedule for installing controls, and quantity of the benzene emissions that result from extending the compliance date;

(ii) If the control approach involves a compliance strategy designed to obtain integrated compliance with multiple regulatory requirements, a description of the other regulations involved and their effective dates; and

(iii) A description of the actions to be taken at the facility to obtain mitigating environmental benefits, including how the benefits will be obtained, the schedule for these actions, and an estimate of the quantifiable benefits that directly result from these actions.

(c) * * *

(1) For each waste stream that contains benzene, including (but not limited to) organic waste streams that contain less than 10 percent water and aqueous waste streams, even if the wastes are not discharged to an individual drain system, the owner or operator shall:

* * * * *

(iii) Each waste management unit used to manage or treat waste streams that will be recycled to a process shall comply with the standards specified in §§ 61.343 through 61.347. Once the waste stream is recycled to a process, including to a tank used for the storage of production process feed, product, or product intermediates, unless this tank is used primarily for the storage of wastes, the material is no longer subject to paragraph (c) of this section.

(2) A waste stream is exempt from paragraph (c)(1) of this section provided that the owner or operator demonstrates initially and, thereafter, at least once per year that the flow-weighted annual average benzene concentration for the waste stream is less than 10 ppmw as determined by the procedures specified in § 61.355(c)(2) or § 61.355(c)(3).

(3) A waste stream is exempt from paragraph (c)(1) of this section provided that the owner or operator demonstrates initially and, thereafter, at least once per year that the conditions specified in either paragraph (c)(3)(i) or (c)(3)(ii) of this section are met.

(i) The waste stream is process wastewater that has a flow rate less than 0.02 liters per minute or an annual wastewater quantity of less than 10 Mg/yr; or

(ii) All of the following conditions are met:

(A) The owner or operator does not choose to exempt process wastewater under paragraph (c)(3)(i) of this section,

(B) The total annual benzene quantity in all waste streams chosen for exemption in paragraph (c)(3)(ii) of this section does not exceed 2.0 Mg/yr as determined in the procedures in § 61.355(j), and

(C) The total annual benzene quantity in a waste stream chosen for exemption, including process unit turnaround waste, is determined for the year in which the waste is generated.

(d) As an alternative to the requirements specified in paragraphs (c) and (e) of this section, an owner or operator of a facility at which the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr as determined in paragraph (a) of this section may elect to manage and treat the facility waste as follows:

* * * * *

(e) As an alternative to the requirements specified in paragraphs (c) and (d) of this section, an owner or operator of a facility at which the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr as determined in paragraph (a) of this section may elect to manage and treat the facility waste as follows:

(1) The owner or operator shall manage and treat facility waste with a flow-weighted annual average water content of less than 10 percent in accordance with the requirements of paragraph (c)(1) of this section; and

(2) The owner or operator shall manage and treat facility waste (including remediation and process unit turnaround waste) with a flow-weighted annual average water content of 10 percent or greater, on a volume basis as total water, and each waste stream that is mixed with water or wastes at any time such that the resulting mixture has an annual water content greater than 10 percent, in accordance with the following:

(i) The benzene quantity for the wastes described in paragraph (e)(2) of this section must be equal to or less than 6.0 Mg/yr, as determined in § 61.355(k). Wastes as described in paragraph (e)(2) of this section that are transferred offsite shall be included in the determination of benzene quantity as provided in § 61.355(k). The provisions of paragraph (f) of this section shall not apply to any owner or operator who elects to comply with the provisions of paragraph (e) of this section.

(ii) The determination of benzene quantity for each waste stream defined in paragraph (e)(2) of this section shall be made in accordance with § 61.355(k).

5. Section 61.343 is amended by revising the first sentence of paragraph (a) introductory text; by redesignating paragraphs (b) and (c) as (c) and (d); by adding paragraphs (a)(1)(i)(C) and (b); and by revising newly redesignated paragraph (c) to read as follows:

§ 61.343 Standards: Tanks.

(a) Except as provided in paragraph (b) of this section and in § 61.351, the owner or operator shall meet the following standards for each tank in which the waste stream is placed in accordance with § 61.342 (c)(1)(ii). * * *

(1) * * *

(i) * * *

(C) If the cover and closed-vent system operate such that the tank is maintained at a pressure less than atmospheric pressure, then paragraph (a)(1)(i)(B) of this section does not apply to any opening that meets all of thefollowing conditions:

(1) The purpose of the opening is to provide dilution air to reduce the explosion hazard;

(2) The opening is designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, as determined initially and thereafter at least once per year by the methods specified in § 61.355(h); and

(3) The pressure is monitored continuously to ensure that the pressure in the tank remains below atmospheric pressure.

* * * *

(iii) For a tank that meets all the conditions specified in paragraph (b)(1) of this section, the owner or operator may elect to comply with paragraph (b)(2) of this section as an alternative to the requirements specified in paragraph (a)(1) of this section.

(A) The waste managed in the tank complying with paragraph (b)(2) of this section shall meet all of the following conditions:

(1) Each waste stream managed in the tank must have a flow-weighted annual average water content less than or equal to 10 percent water, on a volume basis as total water.

(2) The waste managed in the tank either:

(A) Has a maximum organic vapor pressure less than 5.2 kilopascals (kPa) (0.75 pounds per square inch (psi));

(B) Has a maximum organic vapor pressure less than 27.6 kPa (4.0 psi) and is managed in a tank having design capacity less than 151 m³ (40,000 gal); or

(C) Has a maximum organic vapor pressure less than 76.6 kPa (11.1 psi) and is managed in a tank having a design capacity less than 75 m³ (20,000 gal).

(2) The owner or operator shall install, operate, and maintain a fixed roof as specified in paragraph (a)(1)(i).

(3) For each tank complying with paragraph (b) of this section, one or more devices which vent directly to the atmosphere may be used on the tank provided each device remains in a closed, sealed position during normal operations except when the device needs to open to prevent physical damage or permanent deformation of the tank or cover resulting from filling or emptying the tank, diurnal temperature changes, atmospheric pressure changes or malfunction of the unit in accordance with good engineering and safety practices for handling flammable, explosive, or other hazardous materials.

(c) Each fixed-roof, seal, access door, and all other openings shall be checked by visual inspection initially and quarterly thereafter to ensure that no cracks or gaps occur and that access doors and other openings are closed and gasketed properly.

* * * * *

6. Section 61.344 is amended by redesignating paragraph (a)(1)(i)(C) as (a)(1)(i)(D), and by adding paragraph (a)(1)(i)(C) to read as follows:

§ 61.344 Standards: Surface impoundments.

(a) * * *

(1) * * *

(i) * * *

(C) If the cover and closed-vent system operate such that the enclosure of the surface impoundment is maintained at a pressure less than atmospheric pressure, then paragraph (a)(1)(i)(B) of this section does not apply to any opening that meets all of the following conditions:

(1) The purpose of the opening is to provide dilution air to reduce the explosion hazard;

(2) The opening is designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, as determined initially and thereafter at least once per year by the methods specified in § 61.355(h) of this subpart; and

(3) The pressure is monitored continuously to ensure that the pressure in the enclosure of the surface impoundment remains below atmospheric pressure.

* * * * *

7. Section 61.345 is amended by revising paragraphs (a)(1)(ii), (a)(2), and (a)(3) introductory text; and by adding paragraph (a)(4) to read as follows:

§ 61.345 Standards: Containers.

(a) * * *

(1) * * *

(ii) Except as provided in paragraph (a)(4) of this section, each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that waste is in the container except when it is necessary to use the opening for waste loading, removal, inspection, or sampling.

(2) When a waste is transferred into a container by pumping, the owner or operator shall perform the transfer using a submerged fill pipe. The submerged fill pipe outlet shall extend to within two fill pipe diameters of the bottom of the container while the container is being loaded. During loading of the waste, the cover shall remain in place and all openings shall be maintained in a closed, sealed position except for those openings required for the submerged fill pipe, those openings required for venting of the container to prevent physical damage or permanent deformation of the container or cover, and any openings complying with paragraph (a)(4) of this section.

(3) Treatment of a waste in a container, including aeration, thermal or other treatment, shall be performed by the owner or operator in a manner such that whenever it is necessary for the container to be open while the waste is being treated, the container is located under a cover (e.g. enclosure) with a closed-vent system that routes all organic vapors vented from the container to a control device, except for cover and closed-vent systems that meet the requirements in paragraph (a)(4) of this section.

* * * * *

(4) If the cover and closed-vent system operate such that the container is maintained at a pressure less than atmospheric pressure, the owner or operator may operate the system with an opening that is not sealed and kept closed at all times if the following conditions are met:

(i) The purpose of the opening is to provide dilution air to reduce the explosion hazard;

(ii) The opening is designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, as determined initially and thereafter at least once per year by methods specified in § 61.355(h); and

(iii) The pressure is monitored continuously to ensure that the pressure in the container remains below atmospheric pressure.

* * * * *

8. Section 61.346 is amended by adding paragraph (a)(1)(i)(C) to read as follows:

§ 61.346 Standards: Individual drain systems.

(a) * * *

(1) * * *

(i) * * *

(C) If the cover and closed-vent system operate such that the individual drain system is maintained at a pressure less than atmospheric pressure, then paragraph (a)(1)(i)(B) of this section does not apply to any opening that meets all of the following conditions:

(1) The purpose of the opening is to provide dilution air to reduce the explosion hazard;

(2) The opening is designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, as determined initially and thereafter at

least once per year by the methods specified in § 61.355(h); and

(3) The pressure is monitored continuously to ensure that the pressure in the individual drain system remains below atmospheric pressure.

* * * * *

9. Section 61.347 is amended by adding paragraph (a)(1)(i)(C) to read as follows:

§ 61.347 Standards: Oil-water separators.

(a) * * *

(1) * * *

(i) * * *

(C) If the cover and closed-vent system operate such that the oil-water separator is maintained at a pressure less than atmospheric pressure, then paragraph (a)(1)(i)(B) of this section does not apply to any opening that meets all of the following conditions:

(1) The purpose of the opening is to provide dilution air to reduce the explosion hazard;

(2) The opening is designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, as determined initially and thereafter at least once per year by the methods specified in § 61.355(h); and

(3) The pressure is monitored continuously to ensure that the pressure in the oil-water separator remains below atmospheric pressure.

* * * * *

10. Section 61.348 is amended by adding a new sentence at the end of paragraph (a)(5); by revising the introductory text of paragraphs (b) and (e); by redesignating paragraphs (f) and (g) as (e)(1) and (e)(2); by adding paragraph (e)(3); and by redesignating paragraphs (h) and (i) as (f) and (g).

§ 61.348 Standards: Treatment Processes.

(a) * * *

(5) * * * These provisions apply to above-ground wastewater treatment systems as well as those that are at or below ground level.

(b) Except for facilities complying with § 61.342(e), the owner or operator that aggregates or mixes individual waste streams as defined in paragraph (a)(5) of this section for management and treatment in a wastewater treatment system shall comply with the following requirements:

* * * * *

(e) Except as specified in paragraph (e)(3) of this section, if the treatment process or wastewater treatment system unit has any openings (e.g., access doors, hatches, etc.), all such openings shall be sealed (e.g., gasketed, latched, etc.) and kept closed at all times when waste is being treated, except during inspection and maintenance.

* * * * *

(3) If the cover and closed-vent system operate such that the treatment process and wastewater treatment system unit are maintained at a pressure less than atmospheric pressure, the owner or operator may operate the system with an opening that is not sealed and kept closed at all times if the following conditions are met:

(i) The purpose of the opening is to provide dilution air to reduce the explosion hazard;

(ii) The opening is designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, as determined initially and thereafter at least once per year by the methods specified in § 61.355(h); and

(iii) The pressure is monitored continuously to ensure that the pressure in the treatment process and wastewater treatment system unit remain below atmospheric pressure.

* * * * *

Section 61.349 is amended by revising paragraphs (a)(1)(ii), (a)(2)(i)(B), (a)(2)(ii), and (e); and by adding paragraphs (a)(1)(iv), and (a)(2)(iv) to read as follows:

§ 61.349 Standards: Closed-vent systems and control devices.

(a) * * *

(1) * * *

(ii) Vent systems that contain any bypass line that could divert the vent stream away from a control device used to comply with the provisions of this subpart shall install, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow away from the control device at least once every 15 minutes, except as provided in paragraph (a)(1)(ii)(B) of this section.

(A) The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere.

(B) Where the bypass line valve is secured in the closed position with a car-seal or a lock-and-key type configuration, a flow indicator is not required.

* * * * *

(iv) For each closed-vent system complying with paragraph (a) of this section, one or more devices which vent directly to the atmosphere may be used on the closed-vent system provided each device remains in a closed, sealed position during normal operations except when the device needs to open to prevent physical damage or permanent deformation of the closed-vent system resulting from malfunction of the unit in accordance with good engineering and safety practices for handling flammable, explosive, or other hazardous materials.

(2) * * *

(i) * * *

(B) Achieve a total organic compound concentration of 20 ppmv (as the sum of the concentrations for individual compounds using Method 18) on a dry basis corrected to 3 percent oxygen; or

* * * * *

(ii) A vapor recovery system (e.g., a carbon adsorption system or a condenser) shall recover or control the organic emissions vented to it with an efficiency of 95 weight percent or greater, or shall recover or control the benzene emissions vented to it with an efficiency of 98 weight percent or greater.

* * * * *

(iv) A control device other than those described in paragraphs (a)(2) (i) through (iii) of this section may be used provided that the following conditions are met:

(A) The device shall recover or control the organic emissions vented to it with an efficiency of 95 weight percent or greater, or shall recover or control the benzene emissions vented to it with an efficiency of 98 weight percent or greater.

(B) The owner or operator shall develop test data and design information that documents the control device will achieve an emission control efficiency of either 95 percent or greater for organic compounds or 98 percent or greater for benzene.

(C) The owner or operator shall identify:

(1) The critical operating parameters that affect the emission control performance of the device;

(2) The range of values of these operating parameters that ensure the emission control efficiency specified in paragraph (a)(2)(iv)(A) of this section is maintained during operation of the device; and

(3) How these operating parameters will be monitored to ensure the proper operation and maintenance of the device.

(D) The owner or operator shall submit the information and data specified in paragraphs (a)(2)(iv) (B) and (C) of this section to the Administrator prior to operation of the alternative control device.

(E) The Administrator will determine, based on the information submitted

...nder paragraph (a)(2)(iv)(D) of this ... on, if the control device subject to ...graph (a)(2)(iv) of this section meets the requirements of § 61.349. The control device subject to paragraph (a)(2)(iv) of this section may be operated ... to receiving approval from the Administrator. However, if the Administrator determines that the control device does not meet the requirements of § 61.349, the facility may be subject to enforcement action beginning from the time the control device began operation.

* * * * *

(f) The Administrator may request at any time an owner or operator demonstrate that a control device meets the applicable conditions specified in paragraph (a)(2) of this section by conducting a performance test using the test methods and procedures as required in 61.355, and for control devices subject to paragraph (a)(2)(iv) of this section, the Administrator may specify alternative test methods and procedures, as appropriate.

* * * * *

12. Section 61.353 is amended by revising paragraph (a) to read as follows:

§ 61.353 Alternative means of emission limitation.

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in benzene emissions at least equivalent to the reduction in benzene emissions from the source achieved by the applicable design, equipment, work practice, or operational requirements in §§ 61.342 through 61.349, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

* * * * *

13. Section 61.354 is amended by revising paragraphs (a)(1), (b), (c)(6)(i), (c)(7)(i), (c)(8), and (d) and by adding paragraphs (c)(9), (f), and (g) to read as follows:

§ 61.354 Monitoring of operations.

(a) * * *

(1) Measure the benzene concentration of the waste stream exiting the treatment process complying with § 61.348(a)(1)(i) at least once per month by collecting and analyzing one or more samples using the procedures specified in § 61.355(c)(3).

* * * * *

(b) If an owner or operator complies with the requirements of § 61.348(b), then the owner or operator shall monitor each wastewater treatment system to ensure the unit is properly operated and maintained by the appropriate monitoring procedure as follows:

(1) For the first exempt waste management unit in each waste treatment train, other than an enhanced biodegradation unit, measure the flow rate, using the procedures of § 61.355(b), and the benzene concentration of each waste stream entering the unit at least once per month by collecting and analyzing one or more samples using the procedures specified in § 61.355(c)(3).

(2) For each enhanced biodegradation unit that is the first exempt waste management unit in a treatment train, measure the benzene concentration of each waste stream entering the unit at least once per month by collecting and analyzing one or more samples using the procedures specified in § 61.355(c)(3).

(c) * * *

(6) * * *

(i) A monitoring device equipped with a continuous recorder to measure either the concentration level of the organic compounds or the concentration level of benzene in the exhaust vent stream from the condenser; or

* * * * *

(7) * * *

(i) A monitoring device equipped with a continuous recorder to measure either the concentration level of the organic compounds or the benzene concentration level in the exhaust vent stream from the carbon bed; or

* * * * *

(8) For a vapor recovery system other than a condenser or carbon adsorption system, a monitoring device equipped with a continuous recorder to measure either the concentration level of the organic compounds or the benzene concentration level in the exhaust vent stream from the control device.

(9) For a control device subject to the requirements of § 61.349(a)(2)(iv), devices to monitor the parameters as specified in § 61.349(a)(2)(iv)(C).

(d) For a carbon adsorption system that does not regenerate the carbon bed directly on site in the control device (e.g., a carbon canister), either the concentration level of the organic compounds or the concentration level of benzene in the exhaust vent stream from the carbon adsorption system shall be monitored on a regular schedule, and the existing carbon shall be replaced with fresh carbon immediately when carbon breakthrough is indicated. The device shall be monitored on a daily basis or at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater. As an alternative to conducting this monitoring, an owner or operator may replace the carbon in the carbon adsorption system with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and either the organic concentration or the benzene concentration in the gas stream vented to the carbon adsorption system.

* * * * *

(f) Owners or operators using a closed-vent system that contains any bypass line that could divert a vent stream from a control device used to comply with the provisions of this subpart shall do the following:

(1) Visually inspect the bypass line valve at least once every month, checking the position of the valve and the condition of the car-seal or closure mechanism required under § 61.349(a)(1)(ii) to ensure that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line.

(2) Visually inspect the readings from each flow monitoring device required by § 61.349(a)(1)(ii) at least once each operating day to check that vapors are being routed to the control device as required.

(g) Each owner or operator who uses a system for emission control that is maintained at a pressure less than atmospheric pressure with openings to provide dilution air shall install, calibrate, maintain, and operate according to the manufacturer's specifications a device equipped with a continuous recorder to monitor the pressure in the unit to ensure that it is less than atmospheric pressure.

14. Section 61.355 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), (b), (c) introductory text, the first sentence of (d), (e)(3), (e)(4), (f)(3), the first sentence of (g), (i) introductory text, (i)(3) introductory text, (i)(3)(ii)(C), (i)(3)(iii), (i)(3)(iv), and (i)(4); by adding paragraph (a)(6); by redesignating paragraphs (c)(1) and (c)(2) as (c)(2) and (c)(3) respectively; by adding (c)(1) and a new sentence to the end of the newly redesignated paragraph (c)(2); and by adding paragraphs (j) and (k) to read as follows:

§ 61.355 Test methods, procedures, and compliance provisions.

(a) * * *

(1) For each waste stream subject to this subpart having a flow-weighted annual average water content greater

than 10 percent water, on a volume basis as total water, or is mixed with water or other wastes at any time and the resulting mixture has an annual average water content greater than 10 percent as specified in § 61.342(a), the owner or operator shall:

(i) Determine the annual waste quantity for each waste stream using the procedures specified in paragraph (b) of this section.

(ii) Determine the flow-weighted annual average benzene concentration for each waste stream using the procedures specified in paragraph (c) of this section.

* * * * *

(2) Total annual benzene quantity from facility waste is calculated by adding together the annual benzene quantity for each waste stream generated during the year and the annual benzene quantity for each process unit turnaround waste annualized according to paragraph (b)(4) of this section.

(3) If the total annual benzene quantity from facility waste is equal to or greater than 10 mg/yr, then the owner or operator shall comply with the requirements of § 61.342 (c), (d), or (e).

* * * * *

(6) The benzene quantity in a waste stream that is generated less than one time per year, except as provided for process unit turnaround waste in paragraph (b)(4) of this section, shall be included in the determination of total annual benzene quantity from facility waste for the year in which the waste is generated unless the waste stream is otherwise excluded from the determination of total annual benzene quantity from facility waste in accordance with paragraphs (a) through (c) of this section. The benzene quantity in this waste stream shall not be annualized or averaged over the time interval between the activities that resulted in generation of the waste, for purposes of determining the total annual benzene quantity from facility waste.

(b) For purposes of the calculation required by paragraph (a) of this section, an owner or operator shall determine the annual waste quantity at the point of waste generation, unless otherwise provided in paragraphs (b) (1), (2), (3), and (4) of this section, by one of the methods given in paragraphs (b) (5) through (7) of this section.

(1) The determination of annual waste quantity for sour water streams that are processed in sour water strippers shall be made at the point that the water exits the sour water stripper.

(2) The determination of annual waste quantity for wastes at coke by-product plants subject to and complying with the control requirements of §§ 61.132, 61.133, 61.134, or 61.139 of subpart L of this part shall be made at the location that the waste stream exits the process unit component or waste management unit controlled by that subpart or at the exit of the ammonia still, provided that the following conditions are met:

(i) The transfer of wastes between units complying with the control requirements of subpart L of this part, process units, and the ammonia still is made through hard piping or other enclosed system.

(ii) The ammonia still meets the definition of a sour water stripper in § 61.341.

(3) The determination of annual waste quantity for wastes that are received at hazardous waste treatment, storage, or disposal facilities from offsite shall be made at the point where the waste enters the hazardous waste treatment, storage, or disposal facility.

(4) The determination of annual waste quantity for each process unit turnaround waste generated only at 2 year or greater intervals, may be made by dividing the total quantity of waste generated during the most recent process unit turnaround by the time period (in the nearest tenth of a year) between the turnaround resulting in generation of the waste and the most recent preceding process turnaround for the unit. The resulting annual waste quantity shall be included in the calculation of the annual benzene quantity as provided in paragraph (a)(1)(iii) of this section for the year in which the turnaround occurs and for each subsequent year until the unit undergoes the next process turnaround. For estimates of total annual benzene quantity as specified in the 90-day report, required under § 61.357(a)(1), the owner or operator shall estimate the waste quantity generated during the most recent turnaround, and the time period between turnarounds in accordance with good engineering practices. If the owner or operator chooses not to annualize process unit turnaround waste, as specified in this paragraph, then the process unit turnaround waste quantity shall be included in the calculation of the annual benzene quantity for the year in which the turnaround occurs.

(5) Select the highest annual quantity of waste managed from historical records representing the most recent 5 years of operation or, if the facility has been in service for less than 5 years but at least 1 year, from historical records representing the total operating life of the facility;

(6) Use the maximum design capacity of the waste management unit; or

(7) Use measurements that are representative of maximum waste generation rates.

(c) For the purposes of the calculation required by §§ 61.355(a) of this subpart, an owner or operator shall determine the flow-weighted annual average benzene concentration in a manner that meets the requirements given in paragraph (c)(1) of this section using either of the methods given in paragraphs (c)(2) and (c)(3) of this section.

(1) The determination of flow-weighted annual average benzene concentration shall meet all of the following criteria:

(i) The determination shall be made at the point of waste generation except for the specific cases given in paragraphs (c)(1)(i)(A) through (D) of this section.

(A) The determination for sour water streams that are processed in sour water strippers shall be made at the point that the water exits the sour water stripper.

(B) The determination for wastes at coke by-product plants subject to and complying with the control requirements of §§ 61.132, 61.133, 61.134, or 61.139 of Subpart L of this part shall be made at the location that the waste stream exits the process unit component or waste management unit controlled by that subpart or at the exit of the ammonia still, provided that the following conditions are met:

(*1*) The transfer of wastes between units complying with the control requirements of Subpart L of this part, process units, and the ammonia still is made through hard piping or other enclosed system.

(*2*) The ammonia still meets the definition of a sour water stripper in § 61.341.

(C) The determination for wastes that are received from offsite shall be made at the point where the waste enters the hazardous waste treatment, storage, or disposal facility.

(D) The determination of flow-weighted annual average benzene concentration for process unit turnaround waste shall be made using either of the methods given in paragraph (c)(2) or (c)(3) of this section. The resulting flow-weighted annual average benzene concentration shall be included in the calculation of annual benzene quantity as provided in paragraph (a)(1)(iii) of this section for the year in which the turnaround occurs and for each subsequent year until the unit undergoes the next process unit turnaround.

(ii) Volatilization of the benzene by exposure to air shall not be used in the

termination to reduce the benzene n--ntration.

(i Mixing or diluting the waste re..n with other wastes or other aterials shall not be used in the etermination—to reduce the benzene on ntration.

(i The determination shall be made rior to any treatment of the waste that moves benzene, except as specified in ar raphs (c)(1)(i)(A) through (D) of ii ection.

(v) For wastes with multiple phases, e determination shall provide the e ated-average benzene concentration as on the benzene concentration in ach phase of the waste and the relative roportion of the phases.

(* * * when an owner or p tor and the Administrator do not gree on determinations of the flow-eighted annual average benzene o entration based on knowledge of e aste, the procedures under aragraph (c)(3) of this section shall be sed to resolve the disagreement.

* * * *

(An owner or operator using erformance tests to demonstrate ompliance of a treatment process with 6 348 (a)(1)(i) shall measure the flow-ve hted annual average benzene oncentration of the waste stream xiting the treatment process by o cting and analyzing a minimum of h representative samples of the va e stream using the procedures in aragraph (c)(3) of this section. * * *

(* * *

The mass flow rate of benzene ntering the treatment process (E_b) shall e determined by computing the r uct of the flow rate of the waste tr m entering the treatment process, s etermined by the inlet flow meter, nd the benz ene concentration of the wa e stream, as determined using the sa pling and analytical procedures sp ified in paragraph (c)(2) or (c)(3) of this section. Three grab samples of the waste shall be taken at equally spaced tir intervals over a 1-hour period. Ea 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs conducted over a 3- ur period. The mass flow rate of be ene entering the treatment process is calculated as follows:

$$E_b = \frac{K}{n \times 10^6} \left[\sum_{i=1}^{n} V_i \; C_i \right]$$

Where:

E_b=Mass flow rate of benzene entering the treatment process, kg/hour.

K=Density of the waste stream, kg/m³.

V_i=Average volume flow rate of waste entering the treatment process during each run i, m³/hour.

C_i=Average concentration of benzene in the waste stream entering the treatment process during each run i, ppmw.

n=Number of runs.

(4) The mass flow rate of benzene exiting the treatment process (E_a) shall be determined by computing the product of the flow rate of the waste stream exiting the treatment process, as determined by the outlet flow meter or the inlet flow meter, and the benzene concentration of the waste stream, as determined using the sampling and analytical procedures specified in paragraph (c)(2) or (c)(3) of this section. Three grab samples of the waste shall be taken at equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs conducted over the same 3-hour period at which the mass flow rate of benzene entering the treatment process is determined. The mass flow rate of benzene exiting the treatment process is calculated as follows:

$$E_a = \frac{K}{n \times 10^6} \left[\sum_{i=1}^{n} V_i \; C_i \right]$$

Where:

E_a=Mass flow rate of benzene exiting the treatment process, kg/hour.

K=Density of the waste stream, kg/m³.

V_i=Average volume flow rate of waste exiting the treatment process during each run i, m³/hour.

C_i=Average concentration of benzene in the waste stream exiting the treatment process during each run i, ppmw.

n=Number of runs.

* * * * *

(f) * * *

(3) The mass flow rate of benzene entering the combustion unit shall be determined by computing the product of the flow rate of the waste stream entering the combustion unit, as determined by the inlet flow meter, and the benzene concentration of the waste stream, as determined using the sampling procedures in paragraph (c)(2) or (c)(3) of this section. Three grab samples of the waste shall be taken at equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs conducted over a 3-hour period. The mass flow rate of benzene into the combustion unit is calculated as follows:

$$E_b = \frac{K}{n \times 10^6} \left[\sum_{i=1}^{n} V_i \; C_i \right]$$

Where:

E_b=Mass flow rate of benzene into the combustion unit, kg/hour.

K=Density of the waste stream, kg/m³.

V_i=Average volume flow rate of waste entering the combustion unit during each run i, m³/hour.

C_i=Average concentration of benzene in the waste stream entering the combustion unit during each run i, ppmw.

n=Number of runs.

* * * * *

(g) An owner or operator using performance tests to demonstrate compliance of a wastewater treatment system unit with § 61.348(b) shall measure the flow-weighted annual average benzene concentration of the wastewater stream where the waste stream enters an exempt waste management unit by collecting and analyzing a minimum of three representative samples of the waste stream using the procedures in paragraph (c)(3) of this section. * * *

* * * * *

(i) An owner or operator using a performance test to demonstrate compliance of a control device with either the organic reduction efficiency requirement or the benzene reduction efficiency requirement specified under § 61.349(a)(2) shall use the following procedures:

* * * * *

(3) The mass flow rate of either the organics or benzene entering and exiting the control device shall be determined as follows:

* * * * *

(ii) * * *

(C) The organic concentration or the benzene concentration, as appropriate, in the vent stream entering and exiting the control shall be determined using Method 18 from Appendix A of 40 CFR part 60.

(iii) The mass of organics or benzene entering and exiting the control device during each run shall be calculated as follows:

$$M_{aj} = K\,V_{aj}\left[\sum_{i=1}^{n} C_{ai}\,MW_i\right](10^{-6})$$

$$M_{bj} = K\,V_{bj}\left[\sum_{i=1}^{n} C_{bi}\,MW_i\right](10^{-6})$$

Where:

M_{aj}=Mass of organics or benzene in the vent stream entering the control device during run j, kg.

M_{bj}=Mass of organics or benzene in the vent stream exiting the control device during run j, kg.

V_{aj}=Volume of vent stream entering the control device during run j at standard conditions, m^3.

V_{bj}=Volume of vent stream exiting the control device during run j at standard conditions, m^3.

C_{ai}=Organic concentration of compound i or the benzene concentration measured in the vent stream entering the control device as determined by Method 18, ppm by volume on a dry basis.

C_{bi}=Organic concentration of compound i or the benzene concentration measured in the vent stream exiting the control device as determined by Method 18, ppm by volume on a dry basis.

MW_i=Molecular weight of organic compound i in the vent stream or the molecular weight of benzene, kg/kg-mol.

n=Number of organic compounds in the vent stream; if benzene reduction efficiency is being demonstrated, then n=1.

K=Conversion factor for molar volume=0.0416 kg-mol/m^3 (at 293°K and 760 mm Hg).

10^{-6}=Conversion from ppm, ppm^{-1}.

(iv) The mass flow rate of organics or benzene entering and exiting the control device shall be calculated as follows:

$$E_a = \left(\sum_{j=1}^{n} M_{aj}\right) / T$$

$$E_b = \left(\sum_{j=1}^{n} M_{bj}\right) / T$$

Where:

E_a=Mass flow rate of organics or benzene entering the control device, kg/hour.

E_b=Mass flow rate of organics or benzene exiting the control device, kg/hour.

M_{aj}=Mass of organics or benzene in the vent stream entering the control device during run j, kg.

M_{bj}=Mass of organics or benzene in vent stream exiting the control device during run j, kg.

T=Total time of all runs, hour.

n=Number of runs.

(4) The organic reduction efficiency or the benzene reduction efficiency for the control device shall be calculated as follows:

$$R = \frac{E_a - E_b}{E_a} \times 100$$

Where:

R=Total organic reduction efficiency or benzene reduction efficiency for the control device, percent.

E_a=Mass flow rate of organics or benzene entering the control device, kg/hr.

E_b=Mass flow rate of organics or benzene exiting the control device, kg/hr.

(j) An owner or operator shall determine the benzene quantity for the purposes of the calculation required by § 61.342 (c)(3)(ii)(B) according to the provisions of paragraph (a) of this section, except that the procedures in paragraph (a) of this section shall also apply to wastes with a water content of 10 percent or less.

(k) An owner or operator shall determine the benzene quantity for the purposes of the calculation required by § 61.342(e)(2) by the following procedure:

(1) For each waste stream that is not controlled for air emissions in accordance with §§ 61.343, 61.344, 61.345, 61.346, 61.347, or 61.348(a), as applicable to the waste management unit that manages the waste, the benzene quantity shall be determined as specified in paragraph (a) of this section, except that paragraph (b)(4) of this section shall not apply, i.e., the waste quantity for process unit turnaround waste is not annualized but shall be included in the determination of benzene quantity for the year in which the waste is generated for the purposes of the calculation required by § 61.342(e)(2).

(2) For each waste stream that is controlled for air emissions in accordance with §§ 61.343, 61.344, 61.345, 61.346, 61.347, or 61.348(a), as applicable to the waste management unit that manages the waste, the determination of annual waste quantity and flow-weighted annual average benzene concentration shall be made at the first applicable location as described in paragraphs (k)(2)(i), (k)(2)(ii), and (k)(2)(iii) of this section and prior to any reduction of benzene concentration through volatilization of the benzene, using the methods given in (k)(2)(iv) and (k)(2)(v) of this section.

(i) where the waste stream enters the first waste management unit not complying with §§ 61.343, 61.344, 61.345, 61.346, 61.347, and 61.348(a) that are applicable to the waste management unit,

(ii) For each waste stream that is managed or treated only in compliance with §§ 61.343 through 61.348(a) up to the point of final direct discharge from the facility, the determination of benzene quantity shall be prior to any reduction of benzene concentration through volatilization of the benzene, or

(iii) For wastes managed in units controlled for air emissions in accordance with §§ 61.343, 61.344, 61.345, 61.346, 61.347, and 61.348(a), and then transferred offsite, facilities shall use the first applicable offsite location as described in paragraphs (k)(2)(i) and (k)(2)(ii) of this section if they have documentation from the offsite facility of the benzene quantity at this location. Facilities without this documentation for offsite wastes shall use the benzene quantity determined at the point where the transferred waste leaves the facility.

(iv) Annual waste quantity shall be determined using the procedures in paragraphs (b)(5), (6), or (7) of this section, and

(v) The flow-weighted annual average benzene concentration shall be determined using the procedures in paragraphs (c)(2) or (3) of this section.

(3) The benzene quantity in a waste stream that is generated less than one time per year, including process unit turnaround waste, shall be included in the determination of benzene quantity as determined in paragraph (k)(6) of this section for the year in which the waste is generated. The benzene quantity in this waste stream shall not be annualized or averaged over the time interval between the activities that resulted in generation of the waste for purposes of determining benzene quantity as determined in paragraph (k)(6) of this section.

(4) The benzene in waste entering an enhanced biodegradation unit, as defined in § 61.348(b)(2)(ii)(B), shall not be included in the determination of benzene quantity, determined in paragraph (k)(6) of this section, if the following conditions are met:

(i) The benzene concentration for each waste stream entering the enhanced biodegradation unit is less than 10 ppmw on a flow-weighted annual average basis, and

(ii) All prior waste management units managing the waste comply with §§ 61.343, 61.344, 61.345, 61.346, 61.347 and 61.348(a).

(5) The benzene quantity for each waste stream in paragraph (k)(2) of this section shall be determined by multiplying the annual waste quantity of each waste stream times its flow-weighted annual average benzene concentration.

(6) The total benzene quantity for the purposes of the calculation required by § 61.342(e)(2) shall be determined by adding together the benzene quantities determined in paragraphs (k)(1) and (k)(5) of this section for each applicable waste stream.

(7) If the benzene quantity determined in paragraph (6) of this section exceeds 6.0 Mg/yr only because of multiple counting of the benzene quantity for a waste stream, the owner or operator may use the following procedures for the purposes of the calculation required by § 61.342(e)(2):

(i) Determine which waste management units are involved in the multiple counting of benzene;

(ii) Determine the quantity of benzene that is emitted, recovered, or removed from the affected units identified in paragraph (k)(7)(i) of this section, or destroyed in the units if applicable, using either direct measurements or the best available estimation techniques developed or approved by the Administrator.

(iii) Adjust the benzene quantity to eliminate the multiple counting of benzene based on the results from paragraph (k)(7)(ii) of this section and determine the total benzene quantity for the purposes of the calculation required by § 61.342(e)(2).

(iv) Submit in the annual report required under § 61.357(a) a description of the methods used and the resulting calculations for the alternative procedure under paragraph (k)(7) of this section, the benzene quantity determination from paragraph (k)(6) of this section, and the adjusted benzene quantity determination from paragraph (k)(7)(iii) of this section.

15. Section 61.356 is amended by redesignating paragraph (b)(4) as (b)(6); by revising newly redesignated (b)(6); by adding paragraphs (b)(4) and (b)(5); by revising paragraph (b)(2), (c), (d), (e)(2), and the introductory text of (f)(2); by removing (f)(2)(i); by redesignating paragraph (f)(2)(ii) as (f)(2)(i); by revising newly redesignated paragraphs (f)(2)(i) introductory text and (f)(2)(i) (E) through (G); by adding paragraph (f)(2)(i)(H); by redesignating (i)(4) as (i)(5); by adding paragraph (i)(4); by revising paragraphs (j)(3), (j)(6), (j)(8), (j)(9), and (j)(11); and by adding paragraphs (j)(12), (m), and adding and reserving paragraph (f)(2)(ii) to read as follows:

§ 61.356 Recordkeeping requirements.

* * * * *

(b) * * *

(2) For each waste stream exempt from § 61.342(c)(1) in accordance with § 61.342(c)(3), the records shall include:

(i) All measurements, calculations, and other documentation used to determine that the continuous flow of process wastewater is less than 0.02 liters per minute or the annual waste quantity of process wastewater is less than 10 Mg/yr in accordance with § 61.342(c)(3)(i), or

(ii) All measurements, calculations, and other documentation used to determine that the sum of the total annual benzene quantity in all exempt waste streams does not exceed 2.0 Mg/yr in accordance with § 61.342(c)(3)(ii).

* * * * *

(4) For each facility where waste streams are controlled for benzene emissions in accordance with § 61.342(e), the records shall include for each waste stream all measurements, including the locations of the measurements, calculations, and other documentation used to determine that the total benzene quantity does not exceed 6.0 Mg/yr.

(5) For each facility where the annual waste quantity for process unit turnaround waste is determined in accordance with § 61.355(b)(5), the records shall include all test results, measurements, calculations, and other documentation used to determine the following information: identification of each process unit at the facility that undergoes turnarounds, the date of the most recent turnaround for each process unit, identification of each process unit turnaround waste, the water content of each process unit turnaround waste, the annual waste quantity determined in accordance with § 61.355(b)(5), the range of benzene concentrations in the waste, the annual average flow-weighted benzene concentration of the waste, and the annual benzene quantity calculated in accordance with § 61.355(a)(1)(iii) of this section.

(6) For each facility where wastewater streams are controlled for benzene emissions in accordance with § 61.348(b)(2), the records shall include all measurements, calculations, and other documentation used to determine the annual benzene content of the waste streams and the total annual benzene quantity contained in all waste streams managed or treated in exempt waste management units.

(c) An owner or operator transferring waste off-site to another facility for treatment in accordance with § 61.342(f) shall maintain documentation for each offsite waste shipment that includes the following information: Date waste is shipped offsite, quantity of waste shipped offsite, name and address of the facility receiving the waste, and a copy of the notice sent with the waste shipment.

(d) An owner or operator using control equipment in accordance with §§ 61.343 through 61.347 shall maintain engineering design documentation for all control equipment that is installed on the waste management unit. The documentation shall be retained for the life of the control equipment. If a control device is used, then the owner or operator shall maintain the control device records required by paragraph (f) of this section.

(e) * * *

(2) If engineering calculations are used to determine treatment process or wastewater treatment system unit performance, then the owner or operator shall maintain the complete design analysis for the unit. The design analysis shall include for example the following information: Design specifications, drawings, schematics, piping and instrumentation diagrams,

and other documentation necessary to demonstrate the unit performance.

* * * * *

(f) * * *

(2) If engineering calculations are used to determine control device performance in accordance with § 61.349(c), then a design analysis for the control device that includes for example:

(i) Specifications, drawings, schematics, and piping and instrumentation diagrams prepared by the owner or operator, or the control device manufacturer or vendor that describe the control device design based on acceptable engineering texts. The design analysis shall address the following vent stream characteristics and control device operating parameters:

* * * * *

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentration, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level or the design outlet benzene concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system that regenerates the carbon bed directly on-site in the control device such as a fixed-bed adsorber, the design analysis shall consider the vent stream composition, constituent concentration, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level or the design exhaust vent stream benzene concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system that does not regenerate the carbon bed directly on-site in the control device, such as a carbon canister, the design analysis shall consider the vent stream composition, constituent concentration, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level or the design exhaust vent stream benzene concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(H) For a control device subject to the requirements of § 61.349(a)(2)(iv), the design analysis shall consider the vent stream composition, constituent concentration, and flow rate. The design analysis shall also include all of the information submitted under § 61.349 (a)(2)(iv).

(ii) [Reserved]

* * * * *

(i) * * *

(4) If measurements of waste stream benzene concentration are performed in accordance with § 61.354(b), the owner or operator shall maintain records that include the date each test is performed and all test results.

* * * * *

(j) * * *

(3) Periods when the closed-vent system and control device are not operated as designed including all periods and the duration when:

(i) Any valve car-seal or closure mechanism required under § 61.349(a)(1)(ii) is broken or the by-pass line valve position has changed.

(ii) The flow monitoring devices required under § 61.349(a)(1)(ii) indicate that vapors are not routed to the control device as required.

* * * * *

(6) If a boiler or process heater is used, then the owner or operator shall maintain records of each occurrence when there is a change in the location at which the vent stream is introduced into the flame zone as required by § 61.349(a)(2)(i)(C). For a boiler or process heater having a design heat input capacity less than 44 MW, the owner or operator shall maintain continuous records of the temperature of the gas stream in the combustion zone of the boiler or process heater and records of all 3-hour periods of operation during which the average temperature of the gas stream in the combustion zone is more than 28°C below the design combustion zone temperature. For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, the owner or operator shall maintain continuous records of the parameter(s) monitored in accordance with the requirements of § 61.354(c)(5).

* * * * *

(8) If a condenser is used, then the owner or operator shall maintain records from the monitoring device of the parameters selected to be monitored in accordance with § 61.354(c)(6). If concentration of organics or concentration of benzene in the control device outlet gas stream is monitored, then the owner or operator shall record all 3-hour periods of operation during which the concentration of organics or the concentration of benzene in the exhaust stream is more than 20 percent greater than the design value. If the temperature of the condenser exhaust stream and coolant fluid is monitored, then the owner or operator shall record all 3-hour periods of operation during which the temperature of the condenser exhaust vent stream is more than 6 °C above the design average exhaust vent stream temperature, or the temperature of the coolant fluid exiting the condenser is more than 6 °C above the design average coolant fluid temperature at the condenser outlet.

(9) If a carbon adsorber is used, then the owner or operator shall maintain records from the monitoring device of the concentration of organics or the concentration of benzene in the control device outlet gas stream. If the concentration of organics or the concentration of benzene in the control device outlet gas stream is monitored, then the owner or operator shall record all 3-hour periods of operation during which the concentration of organics or the concentration of benzene in the exhaust stream is more than 20 percent greater than the design value. If the carbon bed regeneration interval is monitored, then the owner or operator shall record each occurrence when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time.

* * * * *

(11) If an alternative operational or process parameter is monitored for a control device, as allowed in § 61.354(e) of this subpart, then the owner or operator shall maintain records of the continuously monitored parameter, including periods when the device is not operated as designed.

(12) If a control device subject to the requirements of § 61.349(a)(2)(iv) is used, then the owner or operator shall maintain records of the parameters that are monitored and each occurrence when the parameters monitored are outside the range of values specified in § 61.349(a)(2)(iv)(C), or other records as specified by the Administrator.

* * * * *

(m) If a system is used for emission control that is maintained at a pressure less than atmospheric pressure with openings to provide dilution air, then

the owner or operator shall maintain records of the monitoring device and records of all periods during which the pressure in the unit is operated at a pressure that is equal to or greater than atmospheric pressure.

* * * * *

16. Section 61.357 is amended by revising paragraphs (a) introductory text and (a)(4); by adding a new sentence at the end of paragraph (c) and a new sentence at the end of paragraph (d)(2); by removing paragraph (d)(4); by redesignating paragraph (d)(3) as (d)(4); by adding paragraph (d)(3); by redesignating paragraphs (d)(5), (d)(6) and (d)(7) as (d)(6), (d)(7) and (d)(8) respectively; by redesignating the newly redesignated paragraph (d)(7)(iii) as (d)(7)(iv); by adding paragraphs (d)(5), (d)(7)(iii), (d)(7)(iv)(J) and (d)(7)(V); and by revising paragraph (d)(1), the newly redesignated paragraphs (d)(4)(iii), (d)(7)(iv)(D) and (d)(8) to read as follows:

§ 61.357 Reporting requirements.

(a) Each owner or operator of a chemical plant, petroleum refinery, coke by-product recovery plant, and any facility managing wastes from these industries shall submit to the Administrator within 90 days after January 7, 1993, or by the initial startup for a new source with an initial startup after the effective date, a report that summarizes the regulatory status of each waste stream subject to § 61.342 and is determined by the procedures specified in § 61.355(c) to contain benzene. Each owner or operator subject to this subpart who has no benzene onsite in wastes, products, by-products, or intermediates shall submit an initial report that is a statement to this effect. For all other owners or operators subject to this subpart, the report shall include the following information:

* * * * *

(4) The information required in paragraphs (a) (1), (2), and (3) of this section should represent the waste stream characteristics based on current configuration and operating conditions. An owner or operator only needs to list in the report those waste streams that contact materials containing benzene. The report does not need to include a description of the controls to be installed to comply with the standard or other information required in § 61.10(a).

* * * * *

(c) * * * If the information in the annual report required by paragraphs (a)(1) through (a)(3) of this section is not changed in the following year, the owner or operator may submit a statement to that effect.

(d) * * *

(1) Within 90 days after January 7, 1993, unless a waiver of compliance under § 61.11 of this part is granted, or by the date of initial startup for a new source with an initial startup after the effective date, a certification that the equipment necessary to comply with these standards has been installed and that the required initial inspections or tests have been carried out in accordance with this subpart. If a waiver of compliance is granted under § 61.11, the certification of equipment necessary to comply with these standards shall be submitted by the date the waiver of compliance expires.

(2) * * * If the information in the annual report required by paragraphs (a)(1) through (a)(3) of this section is not changed in the following year, the owner or operator may submit a statement to that effect.

(3) If an owner or operator elects to comply with the requirements of § 61.342(c)(3)(ii), then the report required by paragraph (d)(2) of this section shall include a table identifying each waste stream chosen for exemption and the total annual benzene quantity in these exempted streams.

(4) * * *

(iii) For each process wastewater stream identified as being controlled for benzene emissions in accordance with the requirements of this subpart, the table shall report the following information for the process wastewater stream as determined at the exit to the treatment process: Annual waste quantity, range of benzene concentrations, annual average flow-weighted benzene concentration, and annual benzene quantity.

(5) If an owner or operator elects to comply with the alternative requirements of § 61.342(e), then the report required by paragraph (d)(2) of this section shall include a table presenting the following information for each waste stream:

(i) For each waste stream identified as not being controlled for benzene emissions in accordance with the requirements of this subpart; the table shall report the following information for the waste stream as determined at the point of waste generation: annual waste quantity, range of benzene concentrations, annual average flow-weighted benzene concentration, and annual benzene quantity;

(ii) For each waste stream identified as being controlled for benzene emissions in accordance with the requirements of this subpart; the table shall report the following information for the waste stream as determined at the applicable location described in § 61.355(k)(2): Annual waste quantity, range of benzene concentrations, annual average flow-weighted benzene concentration, and annual benzene quantity

* * * * *

(7) * * *

(iii) If a treatment process or wastewater treatment system unit is monitored in accordance with § 61.354(b), then each period of operation during which the flow-weighted annual average concentration of benzene in the monitored waste stream entering the unit is equal to or greater than 10 ppmw and/or the total annual benzene quantity is equal to or greater than 1.0 mg/yr.

(iv) * * *

(D) Each 3-hour period of operation during which the average concentration of organics or the average concentration of benzene in the exhaust gases from a carbon adsorber, condenser, or other vapor recovery system is more than 20 percent greater than the design concentration level of organics or benzene in the exhaust gas.

* * * * *

(J) Each 3-hour period of operation during which the parameters monitored are outside the range of values specified in § 61.349(a)(2)(iv)(C), or any other periods specified by the Administrator for a control device subject to the requirements of § 61.349(a)(2)(iv).

(v) For a cover and closed-vent system monitored in accordance with § 61.354(g), the owner or operator shall submit a report quarterly to the Administrator that identifies any period in which the pressure in the waste management unit is equal to or greater than atmospheric pressure.

(8) Beginning one year after the date that the equipment necessary to comply with these standards has been certified in accordance with paragraph (d)(1) of this section, the owner or operator shall submit annually to the Administrator a report that summarizes all inspections required by §§ 61.342 through 61.354 during which detectable emissions are measured or a problem (such as a broken seal, gap or other problem) that could result in benzone emissions is identified, including information about the repairs or corrective action taken.

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§ 61.359 [Removed]

17. Section 61.359 is removed and reserved.

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