

TITLE 12. AIR QUALITY REGULATIONS

SUBTITLE 12.1 GENERAL PROGRAM 1

§ 1. Scope 1

§ 2. Applicability 1

§ 3. Legal Authorities 1

§ 4. Definitions 2

SUBTITLE 12.2 NEW SOURCE REVIEW – MPTN TIP 4

CHAPTER 1. GENERAL PROVISIONS 4

§ 1. Scope 4

§ 2. Applicability 4

§ 3. Definitions 4

§ 4. Plan Revisions 8

§ 5. Public Participation 8

 a. Public Comment Required 8

 b. Public Notice 9

 c. Public comments and requests for public hearings 9

 d. Public hearings 10

 e. Public Record 10

§ 6. Global Permit Provisions 10

§ 7. Permit Fees 11

§ 8. ReOpening of Issued Permits 11

§ 9. Administrative Permit Revisions 12

§ 10. Change in Ownership 12

CHAPTER 2. MINOR NEW SOURCE REVIEW 12

§ 1. Purpose 12

§ 2. Applicability 12

§ 3. Minor NSR Source Permits 13

 a. Program Requirements 13

 b. Applications 13

 c. Review Criteria 16

 d. Permit Conditions 17

 e. Monitoring, Reporting and Recordkeeping 17

§ 4. General Permits 18

§ 5. Synthetic Minor Sources Permits..... 20

 a. Purpose 20

 b. Applicability 20

 c. Request for Synthetic Minor Source Status 20

 d. Permit Conditions for Synthetic Minor Sources 20

 e. Public Notice 21

CHAPTER 3. NON-ATTAINMENT MAJOR NEW SOURCE REVIEW 22

§ 1. Program 22

§ 2. Applicability 22

§ 3. Definitions 22

§ 4. Program requirements 23

§ 5. Program administration 23

§ 6.	Permits	23
§ 7.	Emissions Offsets	24
§ 8.	Establishing a PAL	25
§ 9.	Public Participation	25
§ 10.	Permit Issuance	25
§ 11.	Administrative Record	26
CHAPTER 4. PREVENTION OF SIGNIFICANT DETERIORATION		26
§ 1.	Program	26
§ 2.	Applicability	27
§ 3.	Definitions	27
§ 4.	Program requirements	28
§ 5.	Permits	28
§ 6.	Program administration	28
§ 7.	Increment Consumption	28
§ 8.	Establishing a PAL	29
§ 9.	Public Participation	29
§ 10.	Permit Issuance	29
§ 11.	Administrative Record	30
<i>SUBTITLE 12.3 OPERATING PERMITS</i>		31
CHAPTER 1. GENERAL PROVISIONS		31
§ 1.	Scope	31
§ 2.	Applicability	31
§ 3.	Definitions	31
CHAPTER 2. MINOR SOURCE REGISTRATIONS		32
§ 1.	Purpose	32
§ 2.	Applicability	32
§ 3.	Registrations	32
CHAPTER 3. NON-TITLE V OPERATING PERMITS		33
§ 1.	Purpose	33
§ 2.	Applicability	33
§ 3.	General Permits	34
§ 4.	Applications	34
§ 5.	Review Criteria	34
§ 6.	Permit Issuance	34
§ 7.	Permit Duration	35
CHAPTER 4. TITLE V OPERATING PERMITS		35
§ 1.	Purpose	35
§ 2.	Applicability	35
§ 3.	Program administration	36
§ 4.	Definitions	36
§ 5.	Permits	36
<i>SUBTITLE 12.4 ADMINISTRATIVE RULES AND REFERENCES</i>		37
CHAPTER 1. PERMIT FEES		37
§ 1.	Application Fees	37
§ 2.	Permit Issuance Fee	37

§ 3. Annual Operating Fees37

§ 4. Payment38

CHAPTER 2. TIMELY REVIEW38

§ 1. General38

§ 2. Requests for General Permit Coverage38

§ 3. Permits38

CHAPTER 3. PROCEDURES FOR APPEAL39

§ 1. Administrative Review39

§ 2. Judicial Review40

CHAPTER 4. COMPLIANCE TESTING AND MONITORING40

§ 1. Purpose and Applicability40

§ 2. Testing, Enforcement, Inspection and Complaints40

§ 3. Continuous Emissions Monitoring Systems (CEMS)41

§ 4. Control Equipment/Catalyst Monitoring Plans43

APPENDICES

- Appendix I: Case-By-Case Control Technology Review Procedures; Including BACT Analysis Guidance For NSR Pollutant Control At Minor Sources
- Appendix II: Applicability Flow Charts
- Appendix III: 40 CFR Part 51, Appendix S - UnOfficial February 5, 2018 Version
- Appendix IV: 40 CFR Part 52.21 - UnOfficial February 5, 2018 Version

HISTORY

<u>Revision</u>	<u>Authorizing Actions</u>	<u>Description</u>
18-Oct-18	TCR101118-05 of 05	Codified as 12 L.U.R.

TITLE 12: AIR QUALITY REGULATION
SUBTITLE 12.1 GENERAL PROGRAM

§ 1. Scope

This Clean Air Program consists of three distinct regulatory components:

- (1) the Tribal Implementation Plan (TIP) consisting of federally enforceable preconstruction permitting programs that:
 - (a) address attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) pursuant to section 110 of the Clean Air Act (The Act, 42 U.S.C. §7410), and
 - (b) allows a Source that otherwise has the Potential to Emit (PTE) Hazardous Air Pollutants (HAPs) in amounts at or above those for major sources of HAP (40 CFR 63.2) to request federally enforceable permit limitations to restrict the Source's PTE to below those of a Major HAP Source;
- (2) Tribal only rules that are intended to ensure facility compliance with other obligations under The Act; and
- (3) programs that the Administrator may approve or may delegate regulatory authority to the Mashantucket Pequot Tribal Nation Air Quality Program (MPTN AQP) for implementation.

§ 2. Applicability

- a. Requirements stated within this Title are applicable to any Person who owns, operates or seeks to construct a Stationary Source of Air Pollutants within Mashantucket.
- b. The effective date of this regulation is October 11, 2018.

§ 3. Legal Authorities

- a. Federal Recognition - The Mashantucket Pequot Tribe was recognized in 1983 by Congressional legislation (Pub.L 98-134, § 9, Oct. 1St, 1983 97 Stat 855, Title 25 U.S.C.A. § 1751-1760).
- b. Tribal Authority to Regulate Air Quality
 - (1) Tribal Council Resolution (TCR) 102600-01 of 02 resolved, "that the Mashantucket Pequot Tribal Council desires to protect the air quality of the regional airshed by establishing Primary Regulatory Authority and creating a Tribal Air Quality Program."
 - (2) Pursuant to the stated desire of TCR102600-01 of 02, an application for Treatment in a similar manner As a State (TAS), under section 301 of the Clean Air Act (42 U.S.C. § 7601), was submitted to Region 1 of the Environmental Protection Agency (EPA) on May 4, 2005. EPA issued the favorable eligibility determination to administer a tribal implementation plan under section 110 of The Act (42 U.S.C. §7410) and Title V of the CAA (42 U.S.C. §7661 *et seq.*) on July 10, 2008.
 - (3) TRC091605-01 of 01 approved a draft Tribal Implementation Plan (TIP) and established procedures to make modifications to the TIP, as necessary, based on public and EPA comment subject to final Tribal Council approval.
 - (4) TCR060806-06 OF 14 adopted the Global Policy for Air Permitting that specified the applicability and review procedures for incorporating "Best Available Control Technology" within permits issued by the MPTN AQP.
 - (5) TCR101118-05 of 05 adopted 47 M.P.T.L., Clean Air Program, which created the MPTN Air Quality Program (AQP), defines the AQP's authority to permit and enforce, and details the procedures required to adopt regulations.

§ 4. Definitions

a. As used in this Title, all terms not defined herein will have the meaning given them within the Clean Air Act. The specific interpretation of terms defined within the Clean Air Act may be subject to EPA policy, memoranda, and guidance. Further, the meaning of such terms may evolve through subsequently promulgated procedures or standards. Therefore, in the event that a term defined in this regulation may become inconsistent with the term further defined within the Clean Air Act, or contradictory to the current interpretation by EPA at that time, the EPA-accepted meaning shall govern.

b. Definitions

- (1) “The Act” or “Clean Air Act” means 42 U.S.C. §7401 et seq., as amended.
- (2) “Administrator” means the Administrator United States Environmental Protection Agency (EPA) or an authorized representative.
- (3) “Air Pollutant” means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any Air Pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term Air Pollutant is used.
- (4) “Air Quality Program” or “AQP” means the regulatory body within the Mashantucket Pequot Tribal government which has been delegated authority over air pollution.
- (5) “Attainment Pollutant” means any Air Pollutant, and pollutants identified as constituents or precursors for that pollutant, for which Mashantucket has been designated as an Attainment or Unclassifiable Area.
- (6) “Attainment or Unclassifiable Area” means for any Air Pollutant, an area designated as attainment or unclassifiable under §107(d)(1)(B) of The Act (42 U.S.C. §7407).
- (7) “Authorized Representative” means, as it pertains to a permittee, an individual selected by the Owner/Operator who is approved to represent the entity in aspects related to this Clean Air Program. The Authorized Representative shall be responsible for, or oversee those individuals responsible for, emissions calculations, submittal of applications, and compliance assurance under this program.
- (8) “Building, Structure, Facility or Installation” means all of the pollutant-emitting activities that 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, as amended.
- (9) “Construction” means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an Emissions Unit) that would result in a change in emissions.
- (10) “Commence” means, as applied to a new Stationary Source or Modification at an Existing Source, that the Owner or Operator has all necessary preconstruction approvals or permits and either has:
 - (a) begun on-site activities including, but not limited to, installing building supports and foundations, laying underground piping or erecting/installing permanent storage structures. The following preparatory activities are excluded: engineering and design planning, geotechnical investigation (surface and subsurface explorations), clearing, grading, surveying, ordering of equipment and materials, storing of equipment or setting up temporary trailers to house construction management or staff and contractor personnel; or
 - (b) 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.
- (11) “Day” means calendar day unless otherwise specified.
- (12) “Enforceable as a Practical Matter” means that an Emission Limitation or other standard is both legally and practicably enforceable as follows.

- (a) An Emission Limitation or other standard is legally enforceable if the Reviewing Authority has the right to enforce it.
 - (b) Practical enforceability for an Emissions Limitation or for other standard (e.g. design standards, equipment standards, work practices, operational standards, or pollution prevention techniques) in a permit for a source is achieved if the permit's provisions specify:
 - (i) a limitation or standard and the Emissions Units or activities at the source subject to the limitation or standard;
 - (ii) the time period for the limitation or standard (e.g., hourly, daily, monthly and/or annual limits such as rolling annual limits); and
 - (iii) the method to determine compliance, including appropriate monitoring, recordkeeping, reporting and testing.
 - (c) For rules and general permits that apply to categories of sources, practical enforceability additionally requires that the provisions:
 - (i) identify the types or categories of sources that are covered by the rule or general permit;
 - (ii) where coverage is optional, provide for notice to the Reviewing Authority of the source's election to be covered by the rule or general permit; and
 - (iii) specify the enforcement consequences relevant to the rule or general permit.
- (13) “Hazardous Air Pollutant” or “HAP” means any Air Pollutant listed in or pursuant to section 112(b) of The Act (42 U.S.C. §7412(b)).
- (14) “Mashantucket” means lands that are part of the Mashantucket (Western) Pequot Reservation and trust lands validly set aside for use of the Mashantucket Pequot Tribe.
- (15) “National Ambient Air Quality Standard” or “NAAQS” means the ambient air quality standards the Administrator has promulgated pursuant to section 109 of The Act (42 U.S.C. §7409).
- (16) “Nonattainment Area” means, for any Air Pollutant, an area which is designated as a “nonattainment area” under §107(d)(1)(B) of The Act (42 U.S.C. §7407).
- (17) “Nonattainment Pollutant” means any Air Pollutant, and pollutants identified as a constituents or precursors for that pollutant, for which Mashantucket has been designated as a Nonattainment Area.
- (18) “Owner or Operator” or “Owner/Operator” means any Person who owns, leases, operates, controls, or supervises a Facility, Building, Structure, or Installation, which directly or indirectly results or may result in emissions of any Air Pollutant for which a national or Tribal standard is in effect.
- (19) “Person” shall mean any Tribal Member, Tribal employee, individual, partnership, firm, company, contractor or subcontractor, corporation, association, organization, estate, governmental entity or any other legal entity or its representative, agents or assigns. Use of the singular shall also include the plural.
- (20) “Reviewing Authority” means, unless otherwise specified, the Air Quality Program as defined within paragraph b(4) of this section.
- (21) “Stationary Source” or “Source” means any Building, Structure, Facility, of Installation which emits or may emit a pollutant subject to the requirements of this title.

SUBTITLE 12.2 NEW SOURCE REVIEW – MPTN TIP

CHAPTER 1. GENERAL PROVISIONS

§ 1. Scope

This Tribal Implementation Plan (TIP) establishes a preconstruction permitting program for new and modified Stationary Sources located within Mashantucket.

- (1) It provides a mechanism for an otherwise major source to voluntarily accept Emission Limitations to restrict its Potential to Emit and become a Synthetic Minor Source.
- (2) It provides the option for major Stationary Sources, seeking to minimize permitting complexities associated with major new source review, to establish a Plant Wide Applicability Limitation within an Actuals PAL permit.
- (3) It sets forth the criteria and procedures that the AQP will use to administer the program.

§ 2. Applicability

a. Requirements of this TIP are applicable to any Person who owns, operates, seeks to construct or plans to modify a Stationary Source of Air Pollutants located within Mashantucket.

- (1) If you Begin Actual Construction of a New Source or Modification that is subject to this subtitle without applying for and receiving a permit pursuant to this subtitle, you will be subject to appropriate enforcement action.
- (2) If you do not construct or operate your source or Modification in accordance with the terms of your permit, you will be subject to appropriate enforcement action.

b. Issuance of a permit under this subtitle does not relieve any owner or operator of the responsibility to comply fully with applicable provisions of this TIP and any other requirements under tribal or federal law.

§ 3. Definitions

a. As used in this subtitle, all terms not defined herein will have the meaning given them within the Clean Air Act except that, where it occurs, the word “State” shall be replaced by the word “Tribe,” “Tribal,” or “Mashantucket” as applicable. The term incorporated by reference shall mean as may be amended from time to time.

- (1) For sources of Regulated NSR Pollutants in Attainment or Unclassifiable Areas, the definitions in 40 CFR §52.21, to the extent that they are used in this subtitle, are incorporated by reference.
- (2) For sources of Regulated NSR Pollutants in Nonattainment Areas, the definitions in 40 CFR Part 51, Appendix S, to the extent that they are used in this subtitle, are incorporated by reference.
- (3) For sources of HAP, the definitions in 40 CFR §63.2, to the extent that they are used in this subtitle, are incorporated by reference.

b. The following definitions apply to this subtitle.

- (1) “Actual Emissions” means:
 - (a) 40 CFR Part 51, Appendix S, paragraph II.A.13 for any Nonattainment Pollutant; and
 - (b) 40 CFR §52.21, paragraph (b)(21) for any Attainment Pollutant.
- (2) “Actuals PAL” means the definition specified in:
 - (a) 40 CFR Part 51, Appendix S, paragraph IV.K.2(i) for any Nonattainment Pollutant; and
 - (b) 40 CFR §52.21, paragraph (aa)(2)(i) for any Attainment Pollutant.
- (3) “Affected Emissions Units” means, excluding those Exempt Minor NSR Emissions Units and Activities at a Minor Source, the following Emissions Units, as applicable.
 - (a) For a proposed New Source, all the Emissions Units.

- (b) For a proposed Modification, the new, modified and replacement Emissions Units involved in the Modification.
- (4) “Allowable Emissions” means the definition specified in:
 - (a) 40 CFR Part 51, Appendix S, paragraph II.A.11 for any Nonattainment Pollutant; and
 - (b) 40 CFR §52.21, paragraph (b)(16) for any Attainment Pollutant.
- (5) “Begin Actual Construction” means:
 - (a) 40 CFR Part 51, Appendix S, paragraph II.A.17 for any Nonattainment Pollutant; and
 - (b) 40 CFR §52.21, paragraph (b)(11) for any Attainment Pollutant.
- (6) “Emergency Engine” means any stationary engine that meets the following criteria.
 - (a) The Emergency Engine is operated to provide electrical power or mechanical work during an emergency situation. Examples include a stationary engine used to produce power for critical networks or equipment (including power supplied to portions of a Facility) when electric power from the local utility (or the normal power source, if the Facility runs on its own power production) is interrupted, or a stationary engine used to pump water in the case of fire or flood, etc.
 - (b) The Emergency Engine may also be operated under limited circumstances as specified, as amended from time to time, in 40 CFR §63.6640(f).
- (7) “Emission Limitation” means a requirement established by the AQP, or Administrator, that limits the quantity, rate or concentration of emissions of Air Pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emissions reduction and any design standard, equipment standard, work practice, operational standard or pollution prevention technique. Emission Limitations must be Enforceable as a Practical Matter.
- (8) “Emission Standard” means any applicable New Source Performance Standard in 40 CFR Part 60, any applicable National Emission Standard for Hazardous Air Pollutants in 40 CFR Parts 61 or 63, and any federal standard for designated facilities and pollutants in 40 CFR Part 62, in all cases as amended from time to time, which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under The Act.
- (9) “Emissions Unit” means the definition specified in:
 - (a) 40 CFR Part 51, Appendix S, paragraph II.A.7 for any Nonattainment Pollutant; and
 - (b) 40 CFR §52.21, paragraph (b)(7) for any Attainment Pollutant.
- (10) “Exempt Minor NSR Emissions Units and Activities” means the following Emissions Units and activities at a source:
 - (a) mobile sources;
 - (b) ventilating units for comfort that do not exhaust Air Pollutants into the ambient air from any manufacturing or other industrial processes;
 - (c) cooking of food, except for wholesale businesses that both cook and sell cooked food;
 - (d) consumer use of office equipment and products;
 - (e) janitorial services and consumer use of janitorial products;
 - (f) internal combustion engines used for landscaping purposes;
 - (g) bench scale laboratory activities, except for laboratory fume hoods or vents;
 - (h) single family residences and other residences with four or fewer dwelling units;
 - (i) Emergency Engines, designed solely for the purpose of providing electrical power during power outages, when the total maximum manufacturer's site-rated horsepower (HP) for all units is below 500.
 - (j) stationary internal combustion engines with a manufacturer's site-rated horsepower of less than 50 HP;
 - (k) furnaces or boilers used for space heating that use only gaseous fuel, with a total maximum heat input (i.e., from all units combined) of 5 million British thermal units per hour (MMBtu/hr) or less; and
 - (l) air conditioning units used for human comfort that do not exhaust Air Pollutants in the atmosphere from

any manufacturing or other industrial processes.

- (11) “Existing Source” means:
- (a) for the purposes of initial compliance on the effective date of this TIP, a Stationary Source at which Construction, Modification, or reconstruction was Commenced before that effective date; and
 - (b) for the purpose of assessing compliance after the effective date of this TIP, any Stationary Source which is not a New Source.
- (12) “Fugitive Emissions” means emissions of an air contaminant, which could not reasonably pass through a stack, vent, chimney or other functionally equivalent opening.
- (13) “Greenhouse Gases” or “GHGs” means the aggregate group of six Greenhouse Gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).
- (14) “Major HAP Source” means 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, considering controls, any Hazardous Air Pollutant, which has been listed pursuant to section 112(b) of the Act, in the aggregate:
- (a) 10 tons per year or more of any Hazardous Air Pollutant, or
 - (b) 25 tons per year or more of any combination of Hazardous Air Pollutants,
 - (c) unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this definition.
- (15) “Major NSR Source” means:
- (a) for the purpose of evaluating Nonattainment Pollutants, Major Stationary Source as defined at 40 CFR Part 51, Appendix S, paragraph II.A.4; and
 - (b) for the purpose of evaluating Attainment Pollutants, Major Stationary Source as defined at 40 CFR §52.21, paragraph (b)(1).
- (16) “Minor Modification” means the following.
- (a) A Modification at a Major NSR Source which, after determining that the Modification is not a Major Modification, would result in a Net Emissions Increase for the pollutant evaluated, from the actual-to-projected-actual test, equal to or greater than the Minor NSR Threshold.
 - (i) When evaluating Nonattainment Pollutants, Major Modification is defined at 40 CFR Part 51, Appendix S, paragraphs II.A.5.
 - (ii) When evaluating Attainment Pollutants, Major Modification is defined at 40 CFR §52.21(b)(2).
 - (b) A Modification at a Minor Source in which the total increase in Allowable Emissions resulting from the Modification would equal or be greater than the Minor NSR Threshold for that pollutant. The total increase in Allowable Emissions resulting from the Modification is the sum of the following:
 - (i) for each new Emissions Unit that is to be added, the emissions increase would be the Potential to Emit of the Emissions Unit;
 - (ii) for each Emissions Unit with an Allowable Emissions limit that is to be changed or replaced, the emissions increase would be the Allowable Emissions of the Emissions Unit after the change, or replacement, minus the Allowable Emissions prior to the change or replacement. However, this may not be a negative value. If the Allowable Emissions of an Emissions Unit would be reduced as a result of the change or replacement, use zero in the calculation; and,
 - (iii) for each unpermitted Emissions Unit (a unit without any enforceable permit conditions) that is to be changed or replaced, the emissions increase is the Allowable Emissions of the Emissions Unit after the change or replacement minus the Potential to Emit prior to the change or replacement. However, this may not be a negative value. If an Emissions Unit's post-change Allowable Emissions would be less than its pre-change Potential to Emit, use zero in the calculation.
- (17) “Minor NSR Source” means a Stationary Source, which is otherwise not a Synthetic Minor Source or Major NSR Source and, without including Exempt Minor NSR Emissions Units and Activities, has a Potential to

- Emit, any Regulated NSR Pollutant evaluated, equal to or greater than the Minor NSR Threshold.
- (18) “Minor NSR Threshold” means, without including Exempt Minor NSR Emissions Units and Activities, any of the following cutoffs for the applicable Regulated NSR Pollutant evaluated, as measured in tons of pollutant emitted per year (tpy).
- (a) Nitrogen oxides (NO_x), 10
 - (b) Volatile Organic Compounds, 5
 - (c) Carbon monoxide (CO), 10
 - (d) Sulfur dioxide (SO₂), 10
 - (e) Particulate Matter, 10
 - (f) PM₁₀, 5
 - (g) PM_{2.5}, 3
 - (h) Lead, 0.1
 - (i) Fluorides, 1
 - (j) Sulfuric acid mist, 2
 - (k) Hydrogen sulfide (H₂S), 2
 - (l) Reduced sulfur compounds (incl. H₂S), 2
 - (m) Municipal waste combustor emissions, 2
 - (n) Municipal solid waste landfill emissions, 10
(as nonmethane organic compounds)
 - (o) Any other limit that may become applicable in the event that an attainment designation for Mashantucket is changed by the Administrator.
- (19) “Minor Source” means any Stationary Source of Regulated NSR Pollutants that is not a Major NSR Source.
- (20) “Modification” means:
- (a) any physical or operational change at a Stationary Source that would cause:
 - (i) an increase in the Allowable Emissions of any Minor Source;
 - (ii) an increase in the Actual Emissions (based on the applicable test under the major NSR program) of a Major NSR Source for any Regulated NSR Pollutant; or
 - (iii) the emission of any Regulated NSR Pollutant not previously emitted.
 - (b) Allowable Emissions of a Minor Source include Fugitive Emissions, to the extent that they are quantifiable, only if the source belongs to one of the source categories listed in part 51, Appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii), as applicable.
 - (c) The following exemptions apply:
 - (i) a physical or operational change does not include routine maintenance, repair or replacement;
 - (ii) an increase in the hours of operation or in the production rate is not considered an operational change unless such change is prohibited under any permit condition that is Enforceable as a Practical Matter; and
 - (iii) a change in ownership at a Stationary Source.
- (21) “New Source” means a Stationary Source on which Construction, Modification, or reconstruction was Commenced after the effective date of the TIP.
- (22) “Plantwide Applicability Limitation” or “PAL” means the definition specified in:
- (a) 40 CFR Part 51, Appendix S, paragraph IV.K.2(v) for any Nonattainment Pollutant; and
 - (b) 40 CFR §52.21, paragraph (aa)(2)(v) for any Attainment Pollutant.
- (23) “Potential to Emit” or “PTE” means the maximum capacity of a 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 as a Practical Matter. Secondary Emissions do not count in determining the Potential to Emit of a source.

- (24) “Regulated NSR Pollutant” means the definition specified in:
- (a) 40 CFR Part 51, Appendix S, paragraph II.A.31 for any Nonattainment Pollutant; and
 - (b) 40 CFR §52.21 paragraph (b)(50) for any Attainment Pollutant.
- (25) “Secondary emissions” means the definition specified in:
- (a) 40 CFR Part 51, Appendix S, paragraph II.A.8 for any Nonattainment Pollutant; and
 - (b) 40 CFR §52.21, paragraph (b)(18) for any Attainment Pollutant.
- (26) “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.
- (27) “Synthetic Minor Source” means a source that otherwise has the Potential to Emit Regulated NSR Pollutants or HAPs in amounts that are at or above those defining a Major NSR Source or Major HAP Source, but that has taken restrictions, in the form of Emission Limitations, so that its Potential to Emit is less than such amounts.

§ 4. Plan Revisions

The Air Quality Program may revise the TIP from time to time provided such changes are:

- (1) consistent with, and adopted following the requirements specified within 47 M.P.T.L. ch. 1, §4;
- (2) consistent with the requirements applicable to implementation plans under section 110 of The Act (42 U.S.C. § 7410);
- (3) submitted to the Administrator, with a certification that the public participation procedures outlined in 47 M.P.T.L. ch. 3, §1 were followed, no later than sixty (60) Days after adoption; and
- (4) approved by the Administrator.

§ 5. Public Participation

a. Public Comment Required

- (1) The AQP must provide opportunity for public comment on all draft permits and public record prior to permit issuance; except that the procedures outlined in this section are not required for:
 - (a) sources seeking coverage under a general permit; and,
 - (b) administrative permit revisions; however,
 - (c) the AQP may determine that public participation is warranted for these actions when taking into consideration the duration of the operation, its location, the nature and projected amount of emissions, anticipated public concern, or any other relevant factors.
- (2) While additional applicable requirements and procedures may be specified within subsequent chapters of this subtitle, at a minimum, the opportunity for public participation on a permit shall include:
 - (a) availability, in the area affected by the air pollution source, of the draft permit and associated public record, as described in paragraph e. of this section, for public inspection;
 - (b) public notice, as provided under paragraph b. of this section, describing the availability of the documents for review and the opportunity to comment;
 - (c) a comment period, no less than thirty (30) Days commencing upon the date of notice publication, for the public to provide comments regarding the draft permit;
 - (d) a thirty (30) day period for EPA to review commencing upon the date a copy of the required notice is provided to the Administrator through the appropriate Regional Office; and
 - (e) if required by paragraph c. of the section, or if the AQP determines that comments received were significant and warrant such, a public hearing for tentative approval of the permit shall be held with notice provided as specified below in paragraph c of this section.

b. Public Notice

- (1) The AQP shall notify the public of a draft permit by a method described in either paragraph b(1)(a) or b(1)(b) of this section. The selected method, known as the “consistent noticing method,” shall comply with the public participation procedural requirements of 40 CFR §51.161, as amended from time to time, and be used for all permits issued under this subtitle and may, when appropriate, be supplemented by other noticing methods on individual permits.
 - (a) Post the information in paragraphs b(1)(a)(i) through (iii) of this section, for the duration of the public comment period, on a public Web site identified by the reviewing authority.
 - (i) A notice of availability of the draft permit for public comment;
 - (ii) the draft permit; and
 - (iii) information on how to access the administrative record for the draft permit.
 - (b) Publish a notice of availability of the draft permit for public comment in a newspaper of general circulation in the area where the source is located. The notice shall include information on how to access the draft permit and the administrative record for the draft permit.
- (2) All public notices issued under this subpart shall contain the following minimum information:
 - (a) name and address of the permitting authority processing the permit;
 - (b) name and address of the permittee or permit applicant and, if different, of the Facility regulated by the permit, except in the case of draft general permits;
 - (c) activity or activities involved in the permit action;
 - (d) emission changes involved in any permit revision;
 - (e) name, address, and telephone number of a person whom interested persons may contact for instructions on how to obtain additional information (e.g. a copy of the draft permit, the statement of basis, the application, relevant supporting materials, or other materials available to the permitting authority that are relevant to the permitting decision);
 - (f) brief description of the comment procedures required by paragraph c of this section, a statement of procedures to request a hearing (unless a hearing has already been scheduled), and other procedures by which the public may participate in the final permit decision; and
 - (g) any additional information considered necessary or proper.
- (3) A public notice of a hearing shall contain the following additional information:
 - (a) date, time, and place of the hearing;
 - (b) brief description of the nature and purpose of the hearing, including the applicable rules and the comment procedures; and
 - (c) reference to the date of any previous public notices relating to the permit.
- (4) Notice of a public hearing may be combined with the notice of tentative permit issuance.

c. Public comments and requests for public hearings.

- (1) During the comment period described within this section, any interested Person may submit written comments and may request a public hearing, if no hearing has been scheduled.
- (2) A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised at the hearing.
- (3) A record of the comments made and answered during the public participation process shall be maintained by the AQP and made available to the public upon request.
- (4) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the AQP may take one or more of the following actions:
 - (a) prepare a new draft permit, appropriately modified;
 - (b) prepare a revised statement of basis, and reopen the comment period; or
 - (c) reopen or extend the comment period to give interested public persons an opportunity to comment on the information or arguments submitted.

- (5) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused the reopening. The public notice shall define the scope of the reopening.
 - (6) All comments shall be considered in making the final decision regarding issuance of the permit.
- d. Public hearings
- (1) Public notice of hearings shall be given as described in paragraph b(1) and include the content specified in b(2)-(3) of this section.
 - (2) Whenever a public hearing is held, the AQP shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.
 - (3) Any public person may submit oral or written statements, and data applicable to the purpose of the hearing. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period shall be automatically extended to the close of any public hearing under this section. The Presiding Officer may also extend the comment period further by so stating at the hearing.
 - (4) Records will be kept of the hearing which shall contain a list of witnesses and the comments of each witness.
- e. Public Record
- (1) With the exception of any material determined to be confidential pursuant to paragraph e(2) of this section, the AQP must make available for public inspection the documents listed in (a) through (e) of this paragraph.
 - (a) Permit applications including any supporting materials submitted with the application (e.g. the applicant's control technology review);
 - (b) any additional information requested by the AQP;
 - (c) the AQP's analysis of the application, including any analysis of the effect of the construction of the source or modification on ambient air quality;
 - (d) for coverage under a general permit, the AQP's analysis of whether your particular emissions unit or source is within the category of emissions units or sources to which the general permit applies (i.e. meets any criteria to be eligible for coverage under the general permit); and
 - (e) a copy of the draft permit or the decision to deny the permit with the justification for denial.
 - (2) Confidential Information entitled to protection under § 114(c) of the Clean Air Act (42 U.S.C. § 7414(c)).
 - (a) An applicant or permittee required to submit information entitled to protection from disclosure under a claim of confidentiality:
 - (i) may submit the material separately;
 - (ii) shall precisely identify the material for which the confidentiality claim is asserted; and,
 - (iii) shall provide sufficient supporting information to allow evaluation of that claim.
 - (b) All confidentiality claims made regarding material submitted to the AQP shall be evaluated under 40 CFR Part 2, Subpart B, as amended from time to time. Information which is emission data, a standard or limitation, or is collected pursuant to § 211(b)(2)(A) of the Clean Air Act (42 U.S.C. § 7545) is not eligible for confidential treatment, as provided in 40 CFR § 2.301(e).

§ 6. Global Permit Provisions

- a. The following provisions shall be incorporated as conditions within all permits issued pursuant to this subtitle.
 - (1) The permittee shall, at all times, properly operate and maintain the sources and systems of treatment and control, and the appurtenances related to them which are installed or used by the permittee to achieve compliance with the conditions of the permit.
 - (a) Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures.
 - (b) It is not a defense for you, as the permittee in an enforcement action, that it would have been necessary

to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

- (2) A violation by the Owner/Operator of any Emission Limitation, Emission Standard or any other condition contained in a permit shall subject the Owner/Operator to any or all enforcement penalties, including permit revocation, available under the Clean Air Program. No subsequent permit will be issued until violations have been resolved to the satisfaction of the AQP.
- (3) Permit conditions will be quantifiable and Enforceable as a Practical Matter. The permit shall contain monitoring, record keeping, and reporting conditions sufficient to determine ongoing compliance.
- (4) The permitted source must not cause or contribute to a violation, or interfere with maintenance of, the NAAQS.
- (5) A source shall be in compliance with all applicable tribal or federal air pollution control rules or regulations at the time the New Source or Modification commences operation.
- (6) The issuance of a permit does not prevent the future adoption by the AQP of pollution control rules, standards or orders more stringent than those in existence at the time the permit is issued and does not prevent the enforcement of these rules, standards or orders against the permittee.
- (7) The permit shall include a severability clause to ensure the continued validity of the other portions of the permit in the event of a challenge to a portion of the permit.
- (8) The permit does not convey any property rights of any sort or any exclusive privilege.
- (9) The permittee shall furnish to the AQP, within a reasonable time, any information that the AQP may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. For any such information claimed to be confidential, you must also submit a claim of confidentiality in accordance with 40 CFR Part 2, Subpart B.
- (10) A permit once issued shall become invalid if the Owner/Operator does not Commence Construction within 18 months after the effective date of the permit, if Construction is discontinued for a period of 18 months or more, or if Construction is not completed within a reasonable time. The AQP may extend the 18 month period upon a 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 project; you must Commence Construction of each such phase within 18 months of the projected and approved commencement date for each phase.
 - b. A permit may be revised, reopened, revoked and reissued or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and re-issuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
 - c. If the permit, or coverage under a general permit, is denied, the reasons for such denial and the procedures for appeal, as outlined in subtitle 12.4, ch. 3, shall be provided in writing.

§ 7. Permit Fees

- a. The permit fees shall be as specified within subtitle 12.4, chapter 1 of this title.
- b. Applications shall not be acknowledged as received until the application fee is collected.
- c. If, pursuant to subtitle 12.4, chapter 1, §2, a permit issuance fee is required, the AQP shall not issue the permit until that fee is paid in full.

§ 8. ReOpening of Issued Permits

- a. The AQP may reopen an existing, currently-in-effect permit, for cause on its own initiative, such as if the permit contains a material mistake or fails to assure compliance with applicable requirements.
- b. No permit, subject to the public participation procedures specified within §5 of this chapter, shall be reopened without providing the opportunity for public participation equal to that specified prior to the initial permit issuance.

§ 9. Administrative Permit Revisions

- a. An administrative permit revision is a permit revision that makes any of the following changes:
 - (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) allows for a change in ownership or operational control of a source where the provisions of §10 of this chapter are satisfied;
 - (4) requires more frequent monitoring or reporting by the permittee;
 - (5) establishes an increase in an Emissions Unit's annual Allowable Emissions limit for a Regulated NSR Pollutant, when the action that necessitates such increase is not otherwise subject to the permitting requirements within this subtitle;
 - (6) establishes an Emission Limitation for a replacement unit when the Construction of which does not trigger the need for a new permit; or
 - (7) incorporates any other type of change that the Reviewing Authority has determined to be similar to those in paragraphs a(1)-(6) of this section.
- b. An administrative permit revision is not subject to the permit application, issuance, public participation or administrative and judicial review requirements of this TIP.

§ 10. Change in Ownership

A permit is valid only for the Emissions Unit(s), Owner/Operator, Facility, mode of operation and special conditions stated in the application, or permit. The Owner/Operator can transfer the permit to a new Owner/Operator by seeking an administrative permit revision, as specified in §9 of this chapter, if:

- (1) the mode of operation and emissions do not change;
- (2) the AQP determines that no other change in the permit is necessary; and
- (3) a written agreement between the current and new permittee is submitted to the AQP containing the specific date for transfer of permit responsibility, coverage, and liability.

CHAPTER 2. MINOR NEW SOURCE REVIEW

§ 1. Purpose

- a. The purpose of this section is to establish a preconstruction permitting program, for new Minor NSR Sources and Minor Modifications at Stationary Sources, that meets the requirements of section 110(a)(2)(C) of the Act (42 U.S.C. § 7410(a)(2)(C)); and to,
 - b. establish a mechanism for an otherwise major source to voluntarily accept restrictions on its potential to emit to become a synthetic minor source. This mechanism may also be used by an otherwise Major HAP Source to voluntarily accept restrictions on its potential to emit to become a synthetic minor HAP source.

§ 2. Applicability

- a. Owners/Operators of the following Stationary Sources must apply for and be granted a permit pursuant to this chapter prior to Beginning Actual Construction:
 - (1) new Minor NSR Sources;
 - (2) Existing Sources seeking to undertake a Minor Modification; and,
 - (3) any Existing Source proposing a physical or operational change at a permitted source that would increase an

Emissions Unit's allowable emissions of a Regulated NSR Pollutant above its existing annual allowable emissions limit must obtain a permit revision to reflect the increase in the limit prior to making the change.

- (a) For physical or operational changes that otherwise are not subject to review under this subtitle, such increase in the annual allowable emissions limit, may be accomplished through an administrative permit revision as provided in Ch. 1, § 9a(5) and (6) of this subtitle.
- (b) Physical or operational changes to existing units, or units that replace existing units, for which short-term emission limits had been established must remain compliant, after the change, with those Emission Limitations; otherwise, the permit revision shall not be issued administratively and is subject to the same public participation and administrative and judicial review requirements as stipulated for a Minor NSR permit.

b. Owners/Operators proposing to construct a new source which meets the requirements of a General Permit issued by the MPTN AQP may seek coverage under the provisions specified within §4 of this chapter.

c. Owners/Operators of a new Synthetic Minor Source or an Existing Synthetic Minor Source proposing a Modification, which is not a Major Modification, must obtain a new Synthetic Minor Source permit pursuant to §5 of this chapter prior to Beginning Actual Construction of the Modification.

d. Owners/Operators proposing a Modification at a Facility that maintains its total source-wide emissions for each pollutant evaluated below a Plantwide Applicability Limit (PAL) and that meets the requirements and is in compliance with their PAL permit.

§ 3. Minor NSR Source Permits

a. Program Requirements

- (1) No Person shall Beginning Actual Construction of any new Minor NSR Source subject to the provisions of this section without first obtaining a permit to construct.
- (2) No Person shall Beginning Actual Construction on a Modification subject to the provisions of this section without:
 - (a) first obtaining a permit to construct; or
 - (b) if the provisions in §2, paragraph a(3)(a) of this chapter are applicable, obtaining an administrative permit revision pursuant to chapter 1, §9 of this subtitle.

b. Applications

- (1) Applications for permits must include the following information, as applicable:
 - (a) Facility information
 - (i) name of the air pollution source and the nature of the business,
 - (ii) street address, telephone number, and facsimile number of the air pollution source,
 - (iii) contact information, including name, mailing address, telephone number, and email information, for:
 - 1. owner/operator;
 - 2. local individual responsible for compliance with the TIP, if different; and
 - 3. individual authorized to receive requests for data and information, if different;
 - (iv) four digit SIC Code(s) for the Facility;
 - (v) typical Facility operating schedule, including number of hours per day, number of days per week, and number of weeks per year; and
 - (b) a listing of each Emissions Unit including:
 - (i) make and model number;
 - (ii) description of process or function including:
 - 1. type of fuels, including maximum heat input nameplate rating of the unit; and,
 - 2. if applicable, type and maximum estimated quantity of raw materials used or amount of final

- product produced on an annual basis;
 - (iii) any manufacturer provided emission information such as emission factors or other guarantees;
 - (iv) a designation of units that are Emergency Engines (subtitle 12.2, ch. 1, § 3b(6)); and
- (c) Detailed unit specific information for all Affected Emissions Units, including:
- (i) additional fuel usage detail, including the following:
 1. sulfur and ash content of the fuel, as applicable;
 2. amount of BTUs per gallon, cubic foot, or ton;
 3. actual annual usage in gallons, cubic feet, or tons; and
 4. solid fuels only, the moisture content;
 - (ii) where the fuel burning device is a boiler:
 1. boiler serial number;
 2. burner specific information including the manufacturer; burner model number; burner serial number; burner type; potential burner fuel flow rate in gallons per hour, millions of cubic feet per hour, or tons per hour;
 3. the actual boiler's nameplate gross heat input rating in millions of BTUs per hour, as affixed by the manufacturer; and
 4. type of combustion for the boiler; and
 - (iii) where the fuel burning device is an internal combustion engine or combustion turbine:
 1. serial number;
 2. potential fuel flow rate;
 3. engine output kilowatt or horsepower rating; and
 4. reason for use;
 - (iv) for a unit of processing or manufacturing equipment:
 1. a brief description of the operational characteristics and history of the device;
 2. the process throughput for raw materials, including the following:
 - a. description of raw materials;
 - b. actual and potential amount of raw materials entering the process in pounds per hour; and
 - c. actual annual throughput in tons per year;
 3. the process throughput for all coatings and solvents, including the following:
 - a. description of coatings and solvents;
 - b. the percentage of weight of solvents in coatings;
 - c. the reason for use;
 - d. the actual and potential amount utilized in pounds per hour; and
 - e. actual annual usage in tons per year;
 - (v) for storage tanks containing fuel or volatile organic compounds:
 1. a brief description of the operational characteristics and history of the storage tank, including the following:
 - a. description of the installation including the dates Construction and operation commenced; and
 - b. location, whether aboveground or underground;
 2. a description of the tank, including the following:
 - a. type; height; diameter; roof slope; color; type of insulation;
 - b. if it is heated, the tank temperature;
 - c. if it is lined, the liner type;
 - d. capacity; and throughput;
 3. for variable vapor space systems, a description of all shipments made to the tank, including the

- following:
- a. the actual number of shipments into the tank per year;
 - b. the actual volume of each shipment;
 - c. the potential volume expansion capability of variable vapor space in gallons; and
 - d. the pressure-vacuum vent settings;
4. liquid information, including the following:
- a. type; molecular weight;
 - b. average bulk liquid temperature;
 - c. true vapor pressure; and
 - d. average density;
- (vi) stack information, including the following:
1. the inside diameter at the exit of the stack, in feet, or stack exit area, in square feet;
 2. whether the stack is capped or otherwise restricted;
 3. stack exit orientation;
 4. discharge height above ground level in feet;
 5. exhaust temperature in degrees Fahrenheit;
 6. exhaust flow in actual cubic feet per minute;
 7. exhaust velocity in feet per second;
 8. identification of any other units utilizing the stack;
 9. whether any unit is equipped with multiple stacks;
 10. the type of stack monitoring used if any.
- (vii) a description of the pollution control equipment, if any, and the effect of such equipment, including the following:
1. description of the pollutants both entering and exiting the control equipment, including the following:
 - a. description of the material;
 - b. temperature of the material in degrees Fahrenheit;
 - c. actual and potential rates of entering emissions in pounds per hour;
 - d. actual and potential rates of annual entering emissions in tons per year; and
 - e. the method used to determine entering emissions;
 2. equipment control and capture efficiency and method of efficiency verification; and
 3. operational characteristics, such as the following:
 - a. volume of gas through the unit;
 - b. temperature of gas through the unit;
 - c. percentage of carbon dioxide and/or oxygen in the gas;
 - d. amount of pressure drop, or water or liquid recycle rate;
 - e. amount of voltage; spark rate; and milliamps; and
- (viii) a description and characterization unit emissions, including the following:
1. the Potential to Emit for each Regulated NSR Pollutant and HAP; and
 2. an estimate of the Actual Emissions for each Regulated NSR Pollutant and HAP; including,
 3. all calculations with emission factor utilized and source for that emission factor; and
- (ix) A case-by-case control technology review
1. For simply packaged units that combust only natural gas or equivalent include a reference, for a similar or identical source, to a previous control technology determination demonstrated acceptable to the MPTN AQP, or which appears in the most current RACT/BACT/LAER clearinghouse publication; otherwise
 2. submit a complete control technology analysis for each Air Pollutant subject to this policy, including but not limited to, secondary and cumulative impacts and cost estimates of all control

- options, or the use of innovative technology;
- (d) A description and characterization of the total facility emissions, including the following:
- (i) type of emissions;
 - (ii) potential pounds per hour and tons per year;
 - (iii) actual pounds per hour and tons per year; and
 - (iv) support data, including the following:
 1. a copy of all calculations used in determining emissions;
 2. a site plan to scale of the facility showing:
 - a. locations of all emission points;
 - b. dimensions of all buildings, including roof heights;
 - c. the Facility's property boundary; and
 3. a copy of the USGS map, properly identified, which shows the facility's location.
- (e) Air Quality Impact Analysis (AQIA)
- (i) If the AQP has reason to be concerned that the Construction or Modification of the Minor Source would cause or contribute to a NAAQS violation, it may require the Owner/Operator to conduct and submit an AQIA.
 - (ii) If required, the applicant must conduct the AQIA using the dispersion models and procedures of 40 CFR Part 51, Appendix W, as amended from time to time. Reports must include an electronic submittal of all data input files in a format that is executable utilizing public domain versions of the model algorithm or software approved by the AQP.
 1. If CO or NO_x are the pollutants of concern, modeling shall include, at minimum, a screening analysis to demonstrate compliance.
 2. If either PM₁₀, PM_{2.5} or SO₂ are the pollutants of concern, a more refined air dispersion modeling analysis will be required to demonstrate compliance with NAAQS.
- (f) any other information specifically requested by the AQP.
- (2) Certification - all applications, reports and notices must include a certification signed by the Authorized Representative as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and beliefs formed after reasonable inquiry, the statements and information are true, accurate, and complete to the best of his/her knowledge and belief.
- (3) For New and Existing Sources, the Actual Emissions estimates must be based upon actual test data or, in the absence of such data, upon procedures acceptable to the AQP. Any emission estimates submitted to the AQP must be verifiable using currently accepted engineering criteria. The following procedures, in order of preference, are generally acceptable for estimating emissions from air pollution sources:
- (a) source-specific emission tests;
 - (b) material/mass balance calculations;
 - (c) published, verifiable, and/or equipment vendor supplied emission factors that are applicable to the source;
 - (d) other engineering calculations; or
 - (e) other procedures to estimate emissions specifically approved by the AQP and authorized by the EPA.
- c. Review Criteria
- (1) The AQP shall act on the permit application as expeditiously as possible concluding a completeness review and rendering a final decision within the time periods specified with subtitle 12.4, ch. 2 of this title.
 - (2) The AQP will conduct a case-by-case control technology review, described within Appendix I to this title, to determine the appropriate level of control, if any, necessary to assure that NAAQS are achieved.
 - (a) The AQP, when carrying out this case-by-case control technology review, will consider the following factors:
 - (i) local air quality conditions;

- (ii) typical control technology or other emissions reduction measures used by similar sources in surrounding areas;
 - (iii) anticipated economic growth in the area; and
 - (iv) cost-effective emission reduction alternatives.
 - (3) If the AQIA reveals that Construction or Modification of your source would cause or contribute to a violation, or interfere with maintenance of, the NAAQS, the AQP must require the applicant to reduce or mitigate such impacts before it can issue a permit.
 - (4) Draft permits will be provided to the applicant for comment prior to proceeding with any required public participation procedures stipulated within ch. 1, §5 of this subtitle.
- d. Permit Conditions
- (1) Permits are issued based on the production/process rate and hours of operation requested in the permit application. The AQP may modify these operational limitations, or any other requested permit condition, to create federally enforceable, Enforceable as a Practical Matter permit conditions.
 - (2) Permits will specify Emission Limitations for each Regulated NSR Pollutant and/or HAP emitted by applicable Affected Emissions Units at the source.
 - (a) Emission Limitations established by the AQP may consist of: numerical limits on the quantity, rate or concentration of emissions; pollution prevention techniques; design standards; equipment standards; work practices; operational standards; requirements relating to the operation or maintenance of the source; or, any combination thereof.
 - (b) The Emission Limitations established by the AQP will:
 - (i) assure that each Affected Emissions Unit will comply with all applicable Emission Standards as well as any other TIP requirements that apply to the unit; and,
 - (ii) not be affected in a manner by so much of a Stack's height as exceeds good engineering practice or by any other dispersion technique, except as provided in 40 CFR §51.118(b), as amended from time to time. If the AQP proposes to issue a permit to a source based on a good engineering practice stack height that exceeds the height allowed by 40 CFR §51.100(ii)(1) or (2), it must make available to the public the demonstration study and provide opportunity for a public hearing according to the requirements of ch. 1, §5d of this subtitle.
 - (c) The Owner/Operator shall take all appropriate actions to prevent emissions which will result in violation of any applicable Emission Limitation Standard.
 - (3) Permits shall contain all the provisions specified within ch. 1, §6 of this subtitle.
- e. Monitoring, Reporting and Recordkeeping
- (1) Monitoring Requirements - The permit must include monitoring requirements sufficient to assure compliance with the Emission Limitations and annual Allowable Emissions limits that apply to the Affected Emissions Units at the source. The AQP may require, as appropriate, any of the following requirements:
 - (a) direct emissions or parametric monitoring, including analysis procedures, test methods, periodic testing, instrumental monitoring and non-instrumental monitoring. Such monitoring requirements shall assure use of test methods, units, averaging periods and other statistical conventions consistent with the required Emission Limitations; and
 - (b) as necessary, requirements concerning the use, maintenance and installation of monitoring equipment or methods.
 - (2) Recordkeeping Requirements
 - (a) The permit must include recordkeeping requirements sufficient to demonstrate compliance with the monitoring requirements.
 - (b) Records of required monitoring information must include, as appropriate:
 - (i) the location, date and time of 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 such analyses; and,
 - (vi) the operating conditions existing at the time of sampling or measurement.
- (c) All required monitoring data, including support information for the monitoring sample, measurement, report or application, must be retained for a minimum of five (5) years. Support information may include all calibration and maintenance records, all original strip-chart recordings or digital records for continuous monitoring instrumentation and copies of all reports required by the permit.
- (d) The Owner/Operator shall compile and maintain records of any event that results in a violation of an applicable Emission Limitation or Emissions Standard. Such records must fully describe the cause of the violation and the reason(s) the violation was unavoidable, including:
- (i) identification of unit or units involved;
 - (ii) date, time and duration of the event;
 - (iii) whether the event was caused by maintenance, malfunction, emergency or other activity;
 - (iv) identification of each limitation or standard exceeded including the specific Air Pollutant(s) involved; and, estimated emission rate during the event; and
 - (v) description of any best management practices employed to limit emissions during the event.
- (3) Reporting Requirements - The permit must include the following reporting requirements.
- (a) Annual submittal of monitoring reports required under paragraph e(1) of this section, including the type and frequency of monitoring and a summary of results obtained by monitoring.
 - (b) Actual Emissions reported must be based upon actual test data or in the absence of such data, upon procedures acceptable to the AQP. Any emission estimates submitted to the AQP must be verifiable using currently accepted engineering criteria. The procedures identified in paragraph b(3) of this section are generally acceptable for estimating emissions from air pollution sources.
 - (c) The Owner/Operator shall report all events that result in a violation of any applicable Emission Limitation or Emission Standard to the AQP. Reports shall contain all information described within paragraph e(2)(d) of this section and any other applicable information to explain the reason(s) the violation was unavoidable.
 - (i) In the event that the violation occurs due to a malfunction, the Owner/Operator shall:
 1. Notify the AQP by telephone or electronic mail as soon as possible during normal working hours, but, in any event, not later than two (2) working days after becoming aware that the malfunction occurred, and
 2. Within thirty (30) Days thereafter, shall submit a written report to the AQP describing the malfunction. In addition to the monitoring, reporting and recordkeeping requirements specified within the permit, the report shall describe the corrective action(s) taken to correct the malfunction and the steps taken to mitigate the condition(s) which lead to the malfunction.
 - (ii) Depending on the severity of the deviation and the Air Pollutants emitted, the AQP may also require the Owner/Operator to include in the report an estimate of the maximum ground level concentration of each Air Pollutant emitted and the potential effect of such on public health.
 - (iii) Sources with units subject to an Emission Standard that requires continuous stack monitoring and reporting to the Administrator do not need to prepare separate incident reports of monitor malfunction or startup/shutdown conditions for those units but must copy the AQP on all reports provided to the Administrator.

§ 4. General Permits

a. Purpose

- (1) This section specifies the minimum content which must be included when the MPIN AQP issues a general permit to establish permit conditions for similar Minor Sources of Air Pollutants thus eliminating the need

for case-by-case permit development.

- (2) This section also details the procedures required of an Owner or Operator to obtain coverage under a general permit issued by the AQP.

b. Applicability

- (1) The AQP, when issuing a general permit shall comply with the provisions set forth in 47 M.P.T.L. ch. 2, §5b.
- (2) A general permit shall, at minimum contain the information specified within paragraph c. of this section.
- (3) Owners/Operators who require a Minor NSR Source permit under the provisions set forth in §3 of this chapter may alternately seek coverage under a general permit issued by the MPTN AQP provided that:
 - (a) the source type is consistent with that identified within a general permit issued by the MPTN AQP, and
 - (b) the Owner/Operator complies with all provisions established within that general permit.

c. General Permit

A general permit must include the following elements:

- (1) Identification of the specific category of Emissions Units or sources to which the general permit applies, including any criteria that the Emissions Units or source must meet to be eligible for coverage under the general permit.
 - (a) The permit must include the Emission Limitations determined by the AQP under §3d(2) of this chapter for each Affected Emissions Unit.
 - (b) If an Affected Emissions Unit is issued an Enforceable as a Practical Matter Emission Limitation lower than the Potential to Emit of that unit, the permit must include an annual Allowable Emissions limit for each Regulated NSR Pollutant emitted by the unit.
- (2) Information required by applicants requesting coverage under a general permit, including, but not limited to:
 - (a) the name, mailing address and email information of the AQP to whom applications must be submitted;
 - (b) the information that must be provided in your application to demonstrate eligibility for coverage under the general permit; and,
 - (c) other requirements deemed necessary by the AQP.
- (3) The effective date(s) of the general permit and rules concerning renewing coverage under the general permit.
- (4) Monitoring, reporting and recordkeeping specified within §3e of this chapter, as applicable.
- (5) Additional permit provisions as described in ch. 1, §6 of this subtitle, as applicable.
- (6) The fee required for processing the request for general permit coverage as specified within subtitle 12.4, ch. 1 of this title.

d. Procedures for obtaining general permit coverage.

- (1) An Owner/Operator proposing to construct a Minor Source which qualifies for a general permit issued by the AQP, may request program coverage by following the procedures established within the general permit. The AQP shall act on the request for coverage under the general permit as expeditiously as possible concluding a completeness review and rendering a final decision within the time periods specified in subtitle 12.4, ch. 2 of this title.
- (2) The AQP will notify the applicant of the approval or denial for coverage under a general permit.
 - (a) The effective date of the permit coverage shall be the date of the notice.
 - (b) The notice is a final action for purposes of judicial review only for the issue of whether the source qualifies for coverage under the general permit.
 - (c) A copy of an approval notice must be posted in a prominent location at the site where the source is located by the Applicant.
- (3) If the AQP has sent a letter approving the request for coverage under a general permit, the Owner/Operator must comply with all conditions and terms of the general permit. The Owner/Operator will be subject to

enforcement action for failure to obtain a preconstruction permit if he/she constructs the Emissions Unit(s) or source with general permit approval and the source is later determined to not qualify under the conditions and terms of the general permit.

- (4) Any source eligible to request coverage under a general permit may request to be excluded from the general permit by applying for a permit under §3 of this chapter.

§ 5. Synthetic Minor Source Permits

a. Purpose

This section specifies additional requirements for sources seeking Synthetic Minor Source status within a permit issued pursuant to this chapter.

b. Applicability

- (1) This section is applicable to any Owner/Operator of a Stationary Source, which would otherwise be classified as Major NSR Source or Major HAP Source, who wants to request a Synthetic Minor Source permit to establish Emission Limitations that limit the sources PTE to below major source thresholds.
- (2) A source that is issued a permit and becomes a Synthetic Minor Source under this section but remains a Major Source for Title V purposes continues to be subject to the applicable Title V program provisions. In addition, a Synthetic Minor Source is subject to all applicable tribal rules, regulations, Emission Standards and other requirements.

c. Request for Synthetic Minor Source Status

- (1) The Owner/Operator who chooses to request Synthetic Minor Source status shall make such a request within an application for a minor source permit as required by §3 of this chapter.
- (2) In addition to the requirements contained in §3b of this chapter, applications shall include:
 - (a) For each Emissions Unit to be covered by an Emissions Limitation, proposed methods to limit and/or restrict the Potential to Emit of each Regulated NSR Pollutant and/or HAP, including:
 - (i) identification of the Emissions Units;
 - (ii) a detailed description of the production processes;
 - (iii) the proposed Emission Limitation and a description of its effect on Actual Emissions or the Potential to Emit. Emission Limitations must have a reasonably short averaging period, taking into consideration the operation of the source and the methods to be used for demonstrating compliance;
 - (iv) proposed testing, monitoring, recordkeeping and reporting requirements to be used to demonstrate and assure compliance with the proposed limitation;
 - (v) description and estimated efficiency of air pollution control equipment under present or anticipated operating conditions;
 - (vi) estimates of the Allowable Emissions and/or Potential to Emit that would result from compliance with the proposed limitation, including all calculations for the estimates for each emission unit; and
 - (vii) any other information specifically requested by the AQP.
 - (b) Information not otherwise required within §3b(1)(c) for Exempt Minor NSR Emissions Units and activities.
- (3) As part of the application's completeness determination described in §3c(1), the AQP shall reach a determination regarding whether it is appropriate to proceed with the applicant's request for Synthetic Minor Source status.

d. Permit Conditions for Synthetic Minor Sources

- (1) Permits issued to Synthetic Minor Sources shall contain all the provisions specified within §3d of this chapter for minor source permits, and the additional provisions as described in ch. 1, §6 of this subtitle.
- (2) In addition, all Synthetic Minor Source permits shall contain the following conditions:

- (a) All conditions which restrict a source's Potential to Emit to below major source thresholds (enabling it to become a Synthetic Minor Source) shall be in the form of Emission Limitations as defined within ch. 1, §3b(7) of this subtitle
 - (b) In addition to the reporting requirements specified within §3e(3) of this chapter, permits may require that emission reports include the following information:
 - (i) Source level information, consisting of:
 1. verification of full name of Facility;
 2. verification of parent company name;
 3. verification of street address (physical location) of the Facility;
 4. verification of four digit SIC Plan(s) for the Facility;
 5. calendar year reportable emissions;
 6. total Facility fuel use and fuel sulfur content and heat value (for combustion installations); and,
 7. Fugitive Emissions.
 - (ii) Emission point level information, consisting of:
 1. average hours of operation per day;
 2. weeks of operation per year (seasonal and annual);
 3. hours of operation per year;
 4. percentage annual throughput (percentage of annual activity by season); and,
 5. verification of latitude and longitude and/or UTM coordinates.
 - (iii) Process level information, consisting of:
 1. maximum heat input (for combustion installations);
 2. quantity of fuels consumed (for combustion installations);
 3. estimated actual annual reportable emissions, for each Regulated NSR Pollutant and/or HAP emitted, (in units of pounds per year);
 4. estimated emissions method;
 5. emission factor(s) (if used to determine Actual Emissions);
 6. primary and secondary control equipment identification plan(s);
 7. control efficiencies achieved by the control equipment;
 - a. the control efficiency should reflect the total control efficiency from all control equipment for a specific criteria group (e.g., VOCs and NO_x).
 - b. if the actual control efficiency is unavailable, the design efficiency or the control efficiency limit imposed by a permit shall be used; and,
 8. annual process rate.
 - (iv) Petroleum, volatile organic liquid, and fuel storage and distribution facilities must provide the following additional information:
 1. tank capacity (including maximum and average liquid height, and working volume); and,
 2. throughput associated with tanks and loading racks (including turnovers per year).
 - (c) Certification - all emission reports required pursuant to paragraph (b) above shall include a certification signed by the Authorized Representative as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete to the best of his/her knowledge and belief.
- e. Public Notice
- In addition to the information required in subtitle 2.1, §5b(2), the public notice shall include a description of the proposed Emission Limitations and their effect on the Potential to Emit of the source.

CHAPTER 3. NON-ATTAINMENT MAJOR NEW SOURCE REVIEW

§ 1. Program

a. The purpose of this part is to implement the Nonattainment Major New Source Review (NNSR) program as set forth in §§171 through 193 of the Clean Air Act (42 U.S.C. §§ 7501-7515).

- (1) It requires that Major NSR Sources subject to this program comply with the provisions and requirements of 40 CFR Part 51, Appendix S (Appendix S) and, as specified in §7 of this Chapter, the requirements of §173(c)(1) of the Clean Air Act (42 U.S.C. § 7503(c)(1)).
- (2) Additionally, it establishes that the AQP will use the criteria and procedures stipulated within Appendix S to issue, administer and enforce permits subject to this chapter.

b. While some of the important provisions of Appendix S are paraphrased in various paragraphs of this chapter to highlight them, the provisions of Appendix S, as may be amended from time to time, are hereby incorporated by reference.

c. For the purposes of this chapter, the term SIP as used in Appendix S means this Tribal Implementation Plan (TIP) and the term “State” shall mean the Tribe (Mashantucket Pequot Tribal Nation), Tribal or, as applicable, Mashantucket.

§ 2. Applicability

a. The provisions of this chapter apply to new Major NSR Sources and Major Modifications if, for the applicable Regulated NSR Pollutant evaluated, Mashantucket is currently designated as a Nonattainment Area under 40 CFR §81.307.

- (1) Whether a project constitutes a Major Modification shall be determined by the provisions established in paragraphs IV.I.1(i) through (v) of Appendix S.
- (2) A project that was determined not to be a part of a Major Modification is subject to the provisions specified within Appendix S paragraph IV.J. if:
 - (a) the Owner/Operator had elected to use the method specified in paragraphs II.A.24(ii)(a) through (c) of Appendix S to calculate Projected Actual Emissions; and,
 - (b) there is a Reasonable Possibility, as defined in paragraph IV.J.6, that the project may result in a Significant Emissions Increase of such pollutant.

b. If a Source or Modification is determined to be a Major NSR Source or Major Modification solely by virtue of a relaxation in any enforceable limitation established on the capacity of the Source or Modification otherwise to emit a pollutant, such as a restriction of hours of operation, then the provisions of this chapter shall apply to the Source or Modification as though Construction had not yet Commenced on the Source or Modification.

c. The provisions of this chapter are also applicable to existing Major NSR Sources that seek to establish a Plantwide Applicability Limit (PAL).

§ 3. Definitions

a. For the purposes of this chapter the definitions contained in paragraphs II.A. and IV.K.2 of Appendix S shall apply except that, where it occurs, the word “State” shall be replaced by the word “Tribe,” “Tribal,” or “Mashantucket” as applicable.

b. For the purpose of this chapter, the following additional definitions shall apply:

- (1) “Major NSR Source” means, for the purpose of this chapter, Major Stationary Source as defined at 40 CFR Part 51, Appendix S, paragraph II.A.4.
- (2) “Northeast Ozone Transport Region” means, pursuant to Part D, Subpart 2, Section 184(a) of the Act (42 U.S.C §7511c(a)), the geographical area comprising of the states of:
 - (a) Connecticut;
 - (b) Delaware;
 - (c) Maine;

- (d) Maryland;
- (e) Massachusetts;
- (f) New Hampshire;
- (g) New Jersey;
- (h) New York;
- (i) Pennsylvania;
- (j) Rhode Island;
- (k) Vermont; and
- (l) The Consolidated Metropolitan Statistical Area that includes the District of Columbia;

(3) [Reserved]

§ 4. Program requirements

a. Owners or Operators seeking to construct or modify a source subject to the applicability of this chapter must obtain a permit as specified within this chapter prior to Commencement of Construction of the project.

- (1) If you Begin Actual Construction without applying for and receiving a permit pursuant to this section, you will be subject to appropriate enforcement action.
- (2) If you do not construct or operate your source or Modification in accordance with the terms of your major NSR permit issued under this chapter you will be subject to appropriate enforcement action.
- (3) Issuance of a permit under this chapter does not relieve any owners or operators of the responsibility to comply fully with applicable provisions of this TIP and any other applicable requirements under Tribal or Federal law.

b. The owner or operator of an existing Major NSR Source with a Plantwide Applicability Limit (PAL) shall comply with the provisions of its PAL.

§ 5. Program administration

a. The MPTN AQP will issue, administer and enforce permits subject to this chapter by following the provisions stipulated within 40 CFR Part 51, Appendix S.

b. In accordance with section 173(a)(4) of the Act (42 U.S.C. § 7503(a)(4)), the AQP shall not issue a permit or permits to a Stationary Source to which the requirements of this part apply if the Administrator has determined that the applicable implementation plan is not being adequately implemented for the Nonattainment Area in which the proposed source is to be constructed or modified.

§ 6. Permits

a. Applications

- (1) Nonattainment NSR and Plantwide Applicability Limit (PAL) permit applications required under this chapter shall be submitted in accordance with the requirements contained in Chapter 2, §3b and §5c(2) of this title.
- (2) In addition, an application for a nonattainment NSR permit shall contain all information necessary for the AQP to reach a conclusion that all the approval criteria described in paragraph b of this section are satisfied, in particular:
 - (a) A control technology evaluation to demonstrate that any new major Stationary Source or Major Modification will meet the LAER for all new or modified emission units;
 - (b) A documented plan to obtain creditable emission reduction offsets in accordance with §7 of this chapter;
 - (c) A demonstration showing that all Stationary Sources in Mashantucket, which are owned or operated by such person or any entity controlling, controlled by, or under common control with such person, are subject to Emission Limitations and are in compliance, or are on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable Emission Limitations and standards under the Act; and

- (d) A demonstration showing that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, Construction, or Modification by providing an analysis of alternative sites, sizes, production processes, and environmental control techniques in accordance with section 173(a)(5) of the Act (42 U.S.C. § 7503(a)(5)).
 - (3) In addition, an application for a permit to establish a PAL shall contain the information required pursuant to Appendix S, paragraph IV.K.3.
- b. Review Criteria
- (1) The general review criteria for permits are provided in Appendix S, paragraph II.B. In summary, that paragraph basically requires the Reviewing Authority to ensure that the proposed new Major NSR Source or Major Modification would meet all applicable emission requirements in this TIP, any currently applicable New Source Performance Standard in 40 CFR part 60 and any applicable national Emission Standards for Hazardous Air Pollutants in 40 CFR part 61 or part 63, in all cases as amended from time to time, before a permit can be issued.
 - (2) The approval criteria or conditions for obtaining a permit under this chapter for Major NSR Sources and Major Modifications are given in part 51, Appendix S, paragraph IV.A. In summary, the requirements are as follows:
 - (a) the lowest achievable emission rate (LAER) requirement for any NSR pollutant subject to this chapter;
 - (b) certification that all sources owned or operated by the applicant within Mashantucket are in compliance or under a compliance schedule;
 - (c) emissions reductions (offsets) requirement, subject to the provisions of Appendix S, paragraph IV.C, for any source or Modification subject to this program;
 - (d) a demonstration that the emission offsets will provide a net air quality benefit in the affected area; and
 - (e) an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, Construction or Modification.
- c. Emission offset requirement exemption
- (1) Pursuant to section 173(a)(1)(B) of the Act (42 U.S.C. § 7503(a)(1)(B)), under which Major NSR Sources and Major Modifications may be exempted from the offset requirement if they are located in a zone targeted for economic development by the Administrator, in consultation with the Department of Housing and Urban Development (HUD), the MPTN Tribal Council body may seek an exemption from the emission offset requirement (paragraphs b(2)(c) and (d) of this section).
 - (2) In such a situation the AQP could waive the offset requirement for sources and Modifications, provided that:
 - (a) Mashantucket meets the criteria for an economic development zone (EDZ) and the Administrator has approved a request from the Tribe and declared the area an EDZ, and
 - (b) the Tribe demonstrates that the new permitted emissions are consistent with the achievement of reasonable further progress pursuant to section 172(c)(4) of the Act (42 U.S.C. § 7502(c)(4)), and will not interfere with attainment of the applicable NAAQS by the applicable attainment date.

§ 7. Emissions Offsets

- a. Procedures for determining the baseline for emission and air quality offsets is established within Appendix S, paragraph IV.C.
- b. Emissions offsets shall be obtained from offset sources that are located within the same Nonattainment Area, the Greater Connecticut, CT area of which Mashantucket is within, or within another area provided that:
 - (1) the area the offset source is located is of equal or higher nonattainment classification, and,
 - (2) the owner or operator demonstrates that the emissions from that Nonattainment Area, in which the offset source is located, contribute to a violation of the national ambient air quality standard in the Nonattainment Area in which the new or modified source is seeking to locate.

- c. Offsets must be in effect, be ensured by a federally enforceable permit or other federally enforceable document, prior to Commencing Construction and
- d. The required offset ratios are specified within Appendix S, paragraph IV.G.

§ 8. Establishing a PAL

A PAL shall be established, re-opened, renewed, increased, monitored, recorded, and reported in accordance with Appendix S, paragraph IV.K., except that the public participation requirements at paragraph IV.K.5 shall be replaced by §9 of this chapter.

§ 9. Public Participation

- a. This paragraph provides the Public participation procedures, in addition to those provided in ch. 1, §5 of this subtitle, which the AQP must follow prior to the issuance of a permit pursuant to this section.
- b. The AQP shall provide a copy of the public notice to the state and local air pollution control agencies in the affected air quality control region (here, the Connecticut Air Quality Control Region);
- c. The AQP shall make available, regardless of request, either at the Tribal environmental office, a local library or via posting to a publically accessible Web site, the public record. In addition to the content specified in ch. 1, §5e of this subtitle, the public record shall include:
 - (1) the AQP's analysis of the application and any additional information submitted by the applicant, including the LAER analysis and, where applicable, the analysis of emissions reductions (offsets), demonstration of a net air quality benefit in the affected area and analysis of alternative sites, sizes, production processes and environmental control techniques;
 - (2) a copy of the draft permit or the decision to deny the permit with the justification for denial; and
 - (3) all other information described within this section as being part of the administrative record.
- d. The AQP must address all comments in making the final decision.
 - (1) Any person may submit written comments on the draft permit and may request a public hearing. These comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period (including any public hearing).
 - (2) The AQP must keep a record of the commenters and of the issues raised during the public participation process and such records must be available to the public.
- e. The AQP must hold a hearing whenever there is, on the basis of requests, a significant degree of public interest in a draft permit. The AQP may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.
 - (1) The AQP must provide notice of any public hearing at least 30 days prior to the date of the hearing.
 - (2) Public notice of the hearing may be concurrent with that of the draft permit and the two notices may be combined.
 - (3) Reasonable limits may be set upon the time allowed for oral statements at the hearing.
 - (4) The AQP must make a tape recording or written transcript of any hearing available to the public.

§ 10. Permit Issuance

- a. If the permit is denied, the reasons for such denial and the procedures for appeal, as outlined in subtitle 12.4, ch. 3, shall be provided in writing.
- b. If the AQP issues a final permit, it shall provide it to the permittee and make a copy of the permit available at any location where the draft permit was made available.
 - (1) In addition, the AQP must provide adequate public notice of the final permit decision to ensure that the affected community, general public and any individuals who commented on the draft permit have reasonable

access to the decision and supporting materials.

- (2) A final permit becomes effective 30 days after service of notice of the final permit decision, unless:
 - (a) a later effective date is specified in the permit;
 - (b) review of the final permit is requested under subtitle 12.4, ch. 3, §1b(2), in which case the specific terms and conditions of the permit that are the subject of the request for review must be stayed; or
 - (c) the draft permit was subjected to a public comment period and no comments requested a change in the draft permit or a denial of the permit, in which case the AQP may make the permit effective immediately upon issuance.

§ 11. Administrative Record

- a. The AQP must base final permit decisions on an administrative record consisting of:
 - (1) all comments received during any public comment period, including any extension or reopening;
 - (2) the tape or transcript of any hearing(s) held;
 - (3) any written material submitted at such a hearing;
 - (4) any new materials placed in the record as a result of the AQP's evaluation of public comments;
 - (5) other documents in the supporting files for the permit that were relied upon in the decision-making;
 - (6) the final permit;
 - (7) the application and any supporting data furnished by the permit applicant;
 - (8) the draft permit or notice of intent to deny the application or to terminate the permit; and
 - (9) other documents in the supporting files for the draft permit that were relied upon in the decision-making.
- b. The additional documents required under paragraph a. of this section should be added to the record as soon as possible after their receipt or publication by the Reviewing Authority. The record must be complete on the date the final permit is issued.
- c. Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph a of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in that file.
- d. The AQP shall retain this administrative record for a period of not less than five (5) years.

CHAPTER 4. PREVENTION OF SIGNIFICANT DETERIORATION

§ 1. Program

- a. The purpose of this part is to implement the prevention of significant deterioration (PSD) program, as set forth in Sections 160 through 169B of the Act (42 U.S.C. §§ 7470-7492).
 - (1) It requires that Major NSR Sources subject to this program comply with the provisions and requirements of 40 CFR §52.21.
 - (2) Additionally, it establishes that the AQP will use the criteria and procedures stipulated within §52.21 to issue, administer and enforce permits subject to this chapter.
- b. Pursuant to 40 CFR §52.21(g)(1) Mashantucket shall be considered a Class II area.
- c. While some of the important provisions of 40 CFR §52.21 are paraphrased in various paragraphs of this chapter to highlight them, the provisions of 40 CFR §52.21 are hereby incorporated by reference, as may be amended from time to time.
- d. The following paragraphs of 40 CFR §52.21 do not apply for the purposes of this program: Paragraph (a)(1); Paragraph (g); Paragraph (s); Paragraph (t); and Paragraph (u).

e. For the purposes of this chapter, the term “Reviewing Authority” shall replace the word “Administrator” in the paragraphs of 40 CFR §52.21, except in the following paragraphs: Paragraph (b)(17); Paragraph (b)(37)(i); Paragraph (b)(43); Paragraph (b)(48)(ii)(c); Paragraph (b)(50)(i); Paragraph (b)(51); Paragraph (l)(2); and Paragraph (v).

f. For the purposes of this chapter, the term “State implementation plan” as used in 40 CFR §52.21 means this Tribal Implementation Plan (TIP) and the term “State” shall mean the Tribe (Mashantucket Pequot Tribal Nation), Tribal or, as applicable, Mashantucket.

§ 2. Applicability

a. The provisions of this chapter apply to new Major NSR Sources or Major Modifications if, for the applicable Regulated NSR Pollutant evaluated, Mashantucket has been designated as attainment or unclassifiable under 40 CFR §81.307.

- (1) Whether a project constitutes a Major Modification shall be determined by the provisions established in 40 CFR §52.21 paragraph (a)(2)(iv).
- (2) A project that was determined not to be a part of a Major Modification is subject to the provisions specified within §52.21 paragraph (r)(6) if:
 - (a) the Owner/Operator had elected to use the method specified in paragraphs (b)(41)(ii)(a) through (c) of §52.21 to calculate Projected Actual Emissions; and
 - (b) there is a Reasonable Possibility, as defined in paragraph (r)(6)(vi), that the project may result in a Significant Emissions Increase of such pollutant.

b. If a Source or Modification is determined to be a Major NSR Source or Major Modification solely by virtue of a relaxation in any enforceable limitation established on the capacity of the Source or Modification otherwise to emit a pollutant, such as a restriction of hours of operation, then the provisions of this chapter shall apply to the Source or Modification as though Construction had not yet Commenced on the Source or Modification.

c. The provisions of this chapter are also applicable to existing Major NSR Sources that seek to establish a Plantwide Applicability Limit (PAL).

d. This part shall not apply to a Major NSR 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 40 CFR §81.307.

§ 3. Definitions

a. For the purpose of this chapter, the definitions contained in 40 CFR §52.21 paragraphs (b) through (aa)(2), shall apply with the following revisions.

- (1) The term “State” shall mean the Tribe (Mashantucket Pequot Tribal Nation), Tribal or, as applicable, Mashantucket.
 - (2) The definition of “potential to emit” in 40 CFR §52.21(b)(4) shall include the phrase “or enforceable as a practical matter” at the end of the second sentence; and
 - (3) The term “intrastate area,” as used within paragraph (b)(15) of §52.21, shall mean the area within the exterior boundaries of Mashantucket.
 - (4) The definition of “allowable emissions” in 40 CFR §52.21(b)(16) shall not include the word “federally”.
- b. For the purpose of this chapter, the following additional definitions shall apply:
- (1) “Major NSR Source” means, for the purpose of this chapter, Major Stationary Source as defined at 40 CFR §52.21(b)(1).
 - (2) [Reserved]

§ 4. Program requirements

- a. Owners or Operators seeking to construct or modify a source subject to the applicability of this chapter must obtain a permit as specified within this chapter prior to Commencement of Construction of the project.
 - (1) If you Begin Actual Construction without applying for and receiving a permit pursuant to this section, you will be subject to appropriate enforcement action.
 - (2) If you do not construct or operate your source or Modification in accordance with the terms of your major NSR permit issued under this section you will be subject to appropriate enforcement action.
 - (3) Issuance of a permit under this chapter does not relieve any owners or operators of the responsibility to comply fully with applicable provisions of this TIP and any other applicable requirements under Tribal or Federal law.
- b. The owner or operator of an existing Major NSR Source with a Plantwide Applicability Limit (PAL) shall comply with the provisions of its PAL.

§ 5. Permits

- a. Applications
 - (1) PSD and Plantwide Applicability Limit (PAL) permit applications required under this chapter shall be submitted in accordance with the requirements contained in Chapter 2, §3b and §5c(2) of this title.
 - (2) In addition, an application for a PSD permit shall contain all information as follows:
 - (a) a control technology evaluation, in accordance with 40 CFR §52.21(j), to demonstrate that any new major Stationary Source or Major Modification will meet the BACT for all new or modified Emissions Units;
 - (b) a source impact analysis, in accordance with 40 CFR §52.21(k)(1);
 - (c) an air quality analysis in accordance with 40 CFR §52.21(m);
 - (d) source information required in accordance with 40 CFR §52.21(n);
 - (e) additional impact analyses required pursuant to 40 CFR §52.21(o); and
 - (f) a demonstration showing that all Stationary Sources in Mashantucket, which are owned or operated by such person or any entity controlling, controlled by, or under common control with such person, are subject to Emission Limitations and are in compliance, or are on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable Emission Limitations and standards under the Act; and
 - (3) In addition, an application for a permit to establish a PAL shall contain the information required pursuant to 40 CFR §52.21, paragraph (aa)(3).
- b. Review Criteria

A permit application to comply with PSD or to establish a PAL filed with the AQP pursuant to this chapter shall be reviewed in accordance with the criteria set forth in 40 CFR §52.21(j) – (p).

§ 6. Program administration

- a. The MPTN AQP will issue, administer and enforce permits subject to this chapter by following the provisions stipulated within 40 CFR §52.21.
- b. Permits issued shall state that the Major NSR Source or Major Modification will meet the requirements of 40 CFR §52.21 paragraphs (j) through (r)(5), except paragraph (q).

§ 7. Increment Consumption

- a. The AQP shall periodically perform a review of increases in pollutant concentrations over the Baseline Concentration, as that term is defined in 40 CFR §52.21(b)(13), to determine whether the ambient air increments, as established in 40 CFR §52.21(c), have been violated within Mashantucket.
- b. Within 60 days of the discovery of a violation of an ambient air increment, as established in 40 CFR §52.21(c), the

AQP shall submit to the Administrator a plan for insuring that the violation shall be mitigated as soon as possible.

§ 8. Establishing a PAL

A PAL shall be established, re-opened, renewed, increased, monitored, recorded, and reported in accordance with 40 CFR §52.21, paragraph (aa), except that the public participation requirements shall be replaced by §9 of this chapter.

§ 9. Public Participation

a. This paragraph provides the Public participation procedures, in addition to those provided in ch. 1, §5, which the AQP must follow prior to the issuance of a permit pursuant to this section.

b. The AQP shall provide a copy of the public notice to the state and local air pollution control agencies in the affected air quality control region (here, the Connecticut Air Quality Control Region);

c. The AQP shall make available, regardless of request, either at the Tribal environmental office, a local library or via posting to a publically accessible Web site, the public record. In addition to the content specified in ch. 1, §5e of this subtitle, the public record shall include:

- (1) the AQP's analysis of the application and any additional information submitted by the applicant, including the BACT analysis and, where applicable, the degree of increment consumption that is expected from the source or Modification, and analysis of the effect of the proposed facility on air quality;
- (2) a copy of the draft permit or the decision to deny the permit with the justification for denial; and
- (3) all other information described within this section as being part of the administrative record.

d. The AQP must address all comments in making the final decision.

- (1) Any person may submit written comments on the draft permit and may request a public hearing. These comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period (including any public hearing).
- (2) The AQP must keep a record of the commenters and of the issues raised during the public participation process and such records must be available to the public.

e. The AQP must hold a hearing whenever there is, on the basis of requests, a significant degree of public interest in a draft permit. The AQP may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

- (1) The AQP must provide notice of any public hearing at least 30 days prior to the date of the hearing.
- (2) Public notice of the hearing may be concurrent with that of the draft permit and the two notices may be combined.
- (3) Reasonable limits may be set upon the time allowed for oral statements at the hearing.
- (4) The AQP must make a tape recording or written transcript of any hearing available to the public.

§ 10. Permit Issuance

a. If the permit is denied, the reasons for such denial and the procedures for appeal, as outlined in subtitle 12.4, ch. 3, shall be provided in writing.

b. If the AQP issues a final permit, it shall provide it to the permittee and make a copy of the permit available at any location where the draft permit was made available.

- (1) In addition, the AQP must provide adequate public notice of the final permit decision to ensure that the affected community, general public and any individuals who commented on the draft permit have reasonable access to the decision and supporting materials.
- (2) A final permit becomes effective 30 days after service of notice of the final permit decision, unless:
 - (a) a later effective date is specified in the permit;

- (b) review of the final permit is requested under subtitle 12.4, ch. 3, §1b(2), in which case the specific terms and conditions of the permit that are the subject of the request for review must be stayed; or
- (c) The draft permit was subjected to a public comment period and no comments requested a change in the draft permit or a denial of the permit, in which case the AQP may make the permit effective immediately upon issuance.

§ 11. Administrative Record

- a. The AQP must base final permit decisions on an administrative record consisting of:
 - (1) all comments received during any public comment period, including any extension or reopening;
 - (2) the tape or transcript of any hearing(s) held;
 - (3) any written material submitted at such a hearing;
 - (4) any new materials placed in the record as a result of the AQP's evaluation of public comments;
 - (5) other documents in the supporting files for the permit that were relied upon in the decision-making;
 - (6) the final permit;
 - (7) the application and any supporting data furnished by the permit applicant;
 - (8) the draft permit or notice of intent to deny the application or to terminate the permit; and,
 - (9) other documents in the supporting files for the draft permit that were relied upon in the decision-making.
- b. The additional documents required under paragraph a. of this section should be added to the record as soon as possible after their receipt or publication by the Reviewing Authority. The record must be complete on the date the final permit is issued.
- c. Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph a of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in that file.
- d. The AQP shall retain this administrative record for a period of not less than five (5) years.

SUBTITLE 12.3 OPERATING PERMITS**CHAPTER 1. GENERAL PROVISIONS****§ 1. Scope**

This subtitle establishes requirements for Stationary Sources operating within Mashantucket.

- (1) It establishes Source registration requirements to ensure facility compliance and facilitate maintenance of Mashantucket's emission inventory.
- (2) It establishes a non-Title V Source operating permit program to ensure that Sources, that otherwise would not require a permit, comply with any applicable Emissions Standard requirements.
- (3) It specifies the provisions applicable to Title V Sources required to obtain permits to operate consistent with the requirements of Title V of the Act (42 U.S.C. 7401 et seq.) and defines the Reviewing Authority who will administer the Title V program within Mashantucket.

§ 2. Applicability

Requirements stated within this subtitle are applicable to any Person who owns, operates or seeks to construct or modify a Stationary Source of Air Pollutants within Mashantucket.

- (1) All Stationary Sources are required to maintain an up-to-date registration of Emission Units in accordance with chapter 2 of this subtitle.
- (2) All Stationary Sources or Modifications subject to an applicable Emissions Standard must obtain a permit to operate pursuant to chapter 3 of this subtitle, unless:
 - (a) a New Source Review permit is required pursuant to subtitle 12.2;
 - (b) a Title V permit is required pursuant to chapter 4 of this subtitle; or
 - (c) none of the applicable Emission Standards require post-construction compliance testing and/or reporting (not including simple notification requirements).
- (3) Stationary Sources required to obtain an operating permit pursuant to Title V of the federal Clean Air Act (42 U.S.C. §§ 7661 to 7661f, incl.) must obtain a Title V permit in accordance with chapter 4 of this subtitle. This obligation is applicable regardless of the Source having previously obtained a New Source Review Permit pursuant to subtitle 12.2.

§ 3. Definitions

- a. Unless noted within this subtitle definitions previously defined within this title are applicable.
- b. As used in this subtitle, all terms not defined herein will have the meaning given them within the Clean Air Act.
 - (1) For sources of Regulated NSR Pollutants in Attainment or Unclassifiable Areas, the definitions in 40 CFR §52.21 apply to the extent that they are used in this subtitle.
 - (2) For sources of Regulated NSR Pollutants in Nonattainment Areas, the definitions in 40 CFR Part 51, Appendix S, paragraph II.A apply to the extent that they are used in this subtitle.
 - (3) For sources of HAP, the definitions in 40 CFR §63.2 apply to the extent that they are used in this subtitle.
 - (4) For Title V Sources, the definitions in 40 CFR §71.2 apply to the extent that they are used in this subtitle.
- c. The following definitions apply to this chapter.
 - (1) "Post Operational Requirements" mean, in context of an Emission Standard, requirements stated within an applicable standard other than:
 - (a) pre-operational conditions - conditions that apply to purchase or installation – (e.g. installation of a non-resettable hour meter for generators); and
 - (b) requirements involving notification only (e.g. notification to the Administrator of first fire).

- (2) "Title V Source" means a Stationary Source required to obtain an operating permit, as specified within chapter 4, § 2 of this title, pursuant to Title V of the federal Clean Air Act (42 U.S.C. §§ 7661 to 7661f, incl.).

CHAPTER 2. MINOR SOURCE REGISTRATIONS

§ 1. Purpose

The purpose of this section is to establish reporting requirements and procedures for sources that have not otherwise applied for a permit as specified within this Title.

§ 2. Applicability

a. The Owner/Operator of an Existing Source must, no later than 90 Days after being requested by the AQP, file an initial registration.

- (1) Within its request, the AQP shall provide all Source specific information currently within MPTN's emission inventory.
- (2) The Owner/Operator must review, correct, and if necessary, supplement the information provided, in accordance with §3 of this chapter, and return it to the AQP.
- (3) The AQP may extend the time period to file an initial registration by an additional 90 Days if requested.

b. The Owner/Operator of a proposed New Source or a proposed Modification at an Existing Source, which is otherwise not required to obtain a permit pursuant to this Title, must provide all the source specific information specified within §3 of this chapter when applying to the MPTN Land Use Commission (LUC) for a permit.

- (1) 14 M.P.T.L. ch. 5, §1, requires that all Land Use Activities obtain a permit from the LUC prior to Commencing the activity.
- (2) 14 M.P.T.L. ch. 2, §1(b)(18) defines a Land Use Activity as including activities with the potential to impact natural resources including discharges to air and projects with the potential to cause the release of a polluting substance.
- (3) The LUC representative for the Natural Resources Protection discipline shall provide the AQP (if different entities) with all information submitted to the LUC pertinent to this Title and shall cast a veto vote for any LUC permit application involving an Emission Unit whenever the information specified in paragraph c. of this section is not provided.
- (4) Pursuant to 14 M.P.T.L. chapter 6, §1, all work permitted by the LUC shall be completed in accordance with plans, specifications and submittals approved by the LUC. Changes require the Commission's review and approval before the work proceeds. Minor changes, such as make and model of Emission Units specified, may be authorized by the Natural Resources Protection discipline following review by the AQP (if different entities). Significant and material changes require a formal modification of the LUC permit as described within 14 M.P.T.L. ch. 6, §3.
- (5) Unapproved changes to the project may result in issuance of an enforcement order and/or penalties as specified within 14 M.P.T.L. and/or 47 M.P.T.L.

c. Owners/Operators of an Existing Source seeking to undertake a Modification that will make the source subject to the New Source Review requirements specified in subtitle 12.2 shall not Begin Actual Construction without obtaining the relevant air permit.

§ 3. Registrations

a. Registrations shall include the following applicable information:

- (1) Facility information including:

- (a) name of the Stationary Source (Facility) and the nature of the business;
 - (b) street address, mailing address, telephone and email contact information for the following:
 - (i) Stationary Source (Facility);
 - (ii) Owner/Operator;
 - (iii) individual responsible for compliance with this title; and
 - (iv) any other individuals to contact in case additional information is required;
 - (v) the Facility's typical operating schedule, including number of hours per day, number of days per week, and number of weeks per year; and
 - (2) a listing of each Emission Unit including:
 - (a) make and model number;
 - (b) description of process or function including:
 - (i) type of fuels, including maximum heat input nameplate rating of the unit; and,
 - (ii) if applicable, type and maximum estimated quantity of raw materials used or amount of final product produced on an annual basis;
 - (c) any manufacturer provided emission information such as emission factors or other guarantees;
 - (d) a designation of units that are Emergency Engines as defined in subtitle 12.2, ch. 1, § 3b(6); and
 - (e) a description of any air pollution control equipment including make and model, and the stated reduction efficiency for each pollutant controlled.
 - (f) any other information specifically requested by the AQP.
- b. Relocation
- (1) After initial registration, the Owner/Operator of an air pollution source must report any relocation of an emission source to the AQP in writing no later than ten (10) days following the relocation of the source.
 - (2) The report must update the information required in paragraph a. of this section if it will change as a result of the relocation.
 - (3) Submitting a report of relocation does not relieve the Owner/Operator from the requirement to obtain:
 - (a) a New Source Review permit prior to Beginning Actual Construction if the relocation of the air pollution source would be a New Source or Modification subject to subtitle 12.2 of this title.
 - (b) a Land Use permit pursuant to 14 M.P.T.L. ch. 5, §1.
- c. Report of Closure
- After initial registration, except for regular seasonal closures, the Owner/Operator of an air pollution source must submit a report of closure to the AQP in writing within ninety (90) Days after the cessation of all operations at the air pollution source.

CHAPTER 3. NON-TITLE V OPERATING PERMITS

§ 1. Purpose

This chapter establishes an operating permit program to ensure that Sources subject to an Emission Standard with Post Operational Requirements are aware of their on-going compliance obligations. It establishes a mechanism for the AQP to confirm a Sources fulfillment of those obligations.

§ 2. Applicability

- a. Owners/Operators of a Stationary Source that is, or will become, subject to an Emissions Standard with Post Operational Requirements must have a permit that details those obligations.
- b. Owners/Operators with a valid New Source Review permit pursuant to subtitle 12.2, or are required to obtain a Title V permit, pursuant to chapter 4 of this subtitle:

- (1) are not required to obtain a separate permit under this chapter; however,
 - (2) are required to obtain an Administrative Revision to their permit, pursuant to this chapter, any time that the facility, or units within that facility, become subject to an Emissions Standard with Post Operational Requirements and a new permit or permit revision is otherwise not required.
- c. Permits, or permit revisions, must be obtained prior to the first applicable compliance date specified within any applicable Emission Standard (typically the initial notice to be filed with the Administrator).

§ 3. General Permits

Owners/Operators who are required to obtain a permit pursuant to this chapter may alternately seek coverage under one or more general permits issued pursuant to subtitle 12.2, ch. 2, §4 provided that:

- (1) the source type for each applicable Emission Standard is consistent with that identified within a general permit issued by the MPTN AQP, and
- (2) the Owner/Operator complies with all provisions established within that general permit.

§ 4. Applications

a. Applications for permits to operate shall include all information specified within subtitle 12.2, ch. 2, §3 paragraph b of this title except that the following is not required:

- (1) the case-by-case control technology review specified within paragraph b(1)(c)(ix) of that section; and
- (2) the Air Quality Impact Analysis outlined in paragraph b(1)(e) of that section.

b. Applications submitted without the permit application fee, specified within subtitle 12.4, chapter 1 of this title, shall not be deemed as received until the fee is received.

c. Each application shall include a certification signed by the Authorized Representative as to the truth, accuracy, and completeness of the information. This certification must state that, after reasonable inquiry, the statements and information are true, accurate, and complete to the best of his/her knowledge and belief.

d. Applications for revised permits

- (1) Applications shall also include an itemized list, with dates submitted to the AQP and/or Administrator, of all test data, monitoring reports and monitoring plans required during the term of the existing permit.
- (2) The application shall also detail any additions or changes that have occurred at the facility during the term of the existing permit.

§ 5. Review Criteria

a. The AQP shall review the application to ensure compliance with:

- (1) all applicable elements of the MPTN TIP (subtitle 12.2);
- (2) all applicable Emission Standards or other federal requirements governing Air Pollutants; and
- (3) the compliance status with any conditions within an existing permit.

b. The AQP shall, within 30 days of receiving the application, notify the applicant of any additional information required to:

- (1) complete the application;
- (2) evaluate compliance with an existing permit; or,
- (3) assess applicability of other requirements of this title.

§ 6. Permit Issuance

a. The AQP shall have 30 days from the date it receives all information

- b. The AQP shall not issue a permit under the provisions of this chapter when:
 - (1) a New Source Review permit, pursuant to subtitle 12.2, and/or a Title V permit, pursuant to chapter 4 of this subtitle is required.
 - (2) the Owner/Operator is found not to be in compliance with the conditions of a previously issued permit.

§ 7. Permit Duration

- a. Once issued the permit to operate shall remain valid until either:
 - (1) a revision is issued pursuant to this chapter;
 - (2) a New Source Review permit, pursuant to subtitle 12.2, and/or a Title V permit, pursuant to chapter 4 is issued; or
 - (3) the permit is revoked by the AQP for cause or, at the request of the applicant, is terminated.
 - (4) the Owner/Operator removes applicable sources or otherwise believes that a condition of their permit has ceased to be come applicable they must apply for a permit revision or, if all applicability criteria become moot, a permit termination.
- b. If the AQP denies to issue, or revokes for cause, the permit to operate, the Owner/Operator shall cease operations as of:
 - (1) the date of the denial, if the applicant does not appeal the denial within 30 days after a final permit decision has been issued.; or
 - (2) the date the denial is affirmed after all available appeals, as outlined in subtitle 12.4, ch. 3, have been exhausted.

CHAPTER 4. TITLE V OPERATING PERMITS

§ 1. Purpose

This section details the provisions applicable to Title V sources required to obtain permits to operate consistent with the requirements of Title V of the Act (42 U.S.C. §§ 7661 to 7661f, incl.).

§ 2. Applicability

- a. The following sources, unless exempted as provided in paragraph b. of this section, are Title V Sources subject to the operating permit requirements of this section and shall have a permit to operate that assures compliance with all applicable requirements:
 - (1) any major source;
 - (2) any source, including an Area Source, subject to a standard, limitation, or other requirement under section 111 of the Act (42 U.S.C. § 7411) – commonly referred to as New Source Performance Standards (NSPS);
 - (3) any source, including an Area Source, subject to a standard or other requirement under section 112 of the Act (42 U.S.C. § 7412), except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of this Act;
 - (4) any affected source as defined in 40 CFR §72.2; and,
 - (5) any source in a source category designated by the Administrator pursuant to the Act.
- b. The following source categories are exempted from the requirements of this section:
 - (1) sources which are not major, and for which all source applicable standards and requirements under either section 111 or 112 of the Act have been exempted by the Administrator from the requirement to obtain a

- permit under 40 CFR Parts 70 or 71;
- (2) all sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA—Standards of Performance for New Residential Wood Heaters; and
- (3) all sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M—National Emission Standard for Hazardous Air Pollutants for Asbestos, 40 CFR §61.145, Standard for Demolition and Renovation.

§ 3. Program administration

Until such time as the Administrator has explicitly granted full or interim approval to the MPTN AQP for a Title V permit program in compliance with the requirements of 40 CFR Part 70, the Reviewing Authority will issue, administer and enforce Part 71 permits until they may be replaced by permits issued under the approved MPTN AQP Title V program.

- (1) For the purpose of administering the Part 71 program the Reviewing Authority shall be:
 - (a) the Administrator unless the authority to administer a Part 71 program has been delegated to the MPTN AQP;
 - (b) the MPTN AQP following publication of notice of delegation approval for the MPTN AQP to administer a Part 71 program.
- (2) The Reviewing Authority will suspend the issuance of Part 71 permits promptly upon publication of notice of approval of the MPTN AQP Title V permit program.
- (3) The Reviewing Authority may retain jurisdiction over any Part 71 permits for which an administrative or judicial review process is not complete.

§ 4. Definitions

a. As used in this chapter, all terms not defined herein, or within Chapter 1 §4b of this Title, will have the meaning given them in the Clean Air Act.

b. Definitions

- (1) “Part 71 Permit” means any permit or group of permits covering a Title V source that has been issued, renewed, amended or revised pursuant to a Federal operating permits program under 40 CFR Part 71.
- (2) “Permitting Authority” means either of the following:
 - (a) the Administrator, in the case of EPA-implemented programs; or
 - (b) the MPTN Air Quality Program (AQP) if authorized by the Administrator to carry out the permit programs of this chapter.

§ 5. Permits

a. Until such time as the Administrator has explicitly granted full or interim approval to the MPTN AQP for a Title V permit program in compliance with the requirements of 40 CFR Part 70, persons required to obtain operating permits for their Title V source shall apply to the Reviewing Authority for a Part 71 permit as stipulated within 40 CFR Part 71.

b. Reserved

SUBTITLE 12.4 ADMINISTRATIVE RULES AND REFERENCES**CHAPTER 1. PERMIT FEES****§ 1. Application Fees**

a. New Source Review

- (1) The fee for an application submitted in accordance with subtitle 12.2 of this title will be based on annual Allowable Emissions, as defined in ch. 1, §3b(4) of that subtitle.
- (2) Except as provided in paragraph a(3) thru (5) of this section, the fee for permits shall be set equal to \$100 per ton calculated using the highest Regulated NSR Pollutant emitted by the Facility.
- (3) The fee for an application for coverage under a general permit shall be established within the general permit at the time it is issued.
- (4) The fee for Facilities that fall under the umbrella of tribal government operations shall be half the rate specified within this section.
- (5) There shall be no fee for an administrative permit revision.

b. Operating Permits

- (1) There is no fee associated with filing a Minor Source Registration pursuant to subtitle 12.3, chapter 2.
- (2) The fee for applications submitted for a new Non-Title V Operating Permit, in accordance with subtitle 12.3 of this title, is the lesser of the following:
 - (a) \$100 for each unit subject to an applicable Emission Standard; or
 - (b) \$250 for each Emission Standard that is applicable to the Source.
- (3) The fee for applications to revise a Non-Title V Operating Permit shall be calculated as described in paragraph b(2) of this section except that only the units or Emission Standards applicable to the revision shall be used to calculate the fee.
- (4) Fees associated with permits for a Title V permit pursuant to subtitle 12.3, chapter 4, shall be:
 - (a) determined as specified within 40 CFR §71.9.
 - (b) In the case that the part 71 program has been delegated to the AQP and EPA has suspended their fee collection, the application fee shall be that specified within paragraph a. of this section.

§ 2. Permit Issuance Fee

a. General

Except as specified in paragraph b of this section, a permit issuance fee shall only be assessed in cases where the AQP required, due to permit complexity, the assistance of 3rd party technical assistance. In such cases,

- (1) the permit issuance fee shall be the total cost of the 3rd party technical assistance less fifty percent (50%) of the permit application fee previously assessed.
- (2) The AQP shall notify the applicant of the need for 3rd party technical assistance prior to, or at the same time the applicant is notified of the AQP's completeness determination.

b. Title V permits

In addition to the requirements specified in paragraph a. of this section, the permit issuance fee shall include any amount required, as stipulated 40 CFR §71.9, for the first annual operating period.

§ 3. Annual Operating Fees

- a. Except for Title V Sources no fees shall be assessed after permit is issuance.
- b. Title V Sources issued a permit pursuant to subtitle 12.3, chapter 4 of this title are required to pay annual fees

based on Actual Emissions. Such fees shall be specified within the issued Title V permit.

§ 4. Payment

- a. Fees will be paid to the Mashantucket Pequot Tribal Air Quality Program.
- b. Fees collected may be utilized by the Air Quality Program to support any costs associated with evaluation, issuance, or ensuring compliance of the permit.
- c. Application fees are due at the time of submittal. The timely review periods specified within chapter 2 of this subtitle shall not commence until the application fee is collected.
- d. Permit issuance fees, if any, are due prior to the issuance of a permit by the AQP.
- e. Annual operating fees, if any, are due as specified within the facility's operating permit and are a condition of the permit. Late payment of an annual operating fee constitutes a permit violation subject to enforcement action.

CHAPTER 2. TIMELY REVIEW

§ 1. General

- a. The AQP shall act on permit applications as expeditiously as possible by, at minimum, striving to comply with the schedules outlined within this chapter.
- b. If circumstances arise in which the AQP believes that the schedule defined within this chapter is unattainable, the AQP shall attempt to establish a mutually agreed upon schedule with the applicant.

§ 2. Requests for General Permit Coverage

- a. The AQP shall strive to notify the applicant of the final decision within ninety (90) Days of its receipt of the coverage request and collection of the application fee.
- b. The AQP shall first commence a 45-day completeness review period to determine if the request for coverage under a general permit is complete.
 - (1) Within thirty (30) Days after the receipt of the coverage request, the AQP shall make an initial request for any additional information necessary to process the coverage request and the applicant must submit such information within fifteen (15) Days.
 - (a) If the applicant does not submit the requested information within fifteen (15) Days from the request for additional information and this results in a delay that is beyond the 45-day completeness review period, the 90-day permit issuance period for the general permit will be extended by the additional days it takes to submit the requested information beyond the 45-day period.
 - (b) If the AQP notifies the applicant after the 30-day period that additional information necessary to process the coverage request, the applicant will still have fifteen (15) Days to submit such information and the AQP shall still grant or deny the request for coverage under a general permit within the 90-day general permit issuance period and without any time extension.
 - (2) If the AQP determines that the request for coverage under a general permit has all the relevant information and is complete, it will notify the applicant in writing as soon as that determination is made. If the applicant does not receive from the AQP a request for additional information or a notice that the request for coverage under a general permit is complete within the 45-day completeness review period as described in this section, the request will be deemed complete.

§ 3. Permits

- a. The AQP shall strive to act on the permit application, by denying the application or preparing a draft permit that

describes the proposed limitations and its effect on the Potential to Emit of the source within one hundred and twenty (120) Days of its receipt of the application and collection of the application fee.

- b. The AQP shall determine if the application is complete within sixty (60) Days of receipt.
 - (1) Within forty-five (45) Days after the receipt of the application, the AQP must make an initial request for any additional information necessary to process the application and the applicant must submit such information within fifteen (15) Days.
 - (a) If the applicant does not submit the requested information within fifteen (15) Days from the request for additional information and this results in a delay that is beyond the 60-day completeness review period, the 120-day period to deny or prepare a draft permit will be extended by the additional Days it takes to submit the requested information beyond the 60-day period.
 - (b) If the AQP notifies the applicant after the 45-day period that additional information necessary to process the application, the applicant shall have fifteen (15) Days to submit such information and the AQP must still deny or prepare a draft permit within the 120-day period and without any time extension.
 - (2) If the AQP determines that the application contains all the relevant information and is complete, it will notify the applicant in writing as soon as that determination is made. If the applicant does not receive a request from the AQP for additional information or a notice that the application is complete within the 60-day completeness review period described in this paragraph, the application will be deemed complete.

CHAPTER 3. PROCEDURES FOR APPEAL

§ 1. Administrative Review

- a. As specified in 47 M.P.T.L. ch. 5, §1, a Person may, within 30 days after a final permit decision has been issued request a hearing before the AQP if they have been denied a Permit; in addition,
 - b. Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the AQP to review any condition of the permit decision.
 - (1) Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent that the changes from the draft to the final permit or other new grounds were not reasonably ascertainable during the public comment period on the draft permit.
 - (2) The 30-day period within which a person may request review under this section begins with the service of notice of the final permit decision, unless a later date is specified in that notice.
 - c. The petition must include a statement of the reasons supporting the review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations, unless the petitioner demonstrates that it was impracticable to raise such objections were not reasonably ascertainable within such period or unless the grounds for such objection arose after such period and, when appropriate, a showing that the condition in question is based on:
 - (1) a finding of fact or conclusion of law that is clearly erroneous; or
 - (2) an exercise of discretion or an important policy consideration that the AQP should, in its discretion, review.
 - d. The AQP may also decide on its own initiative to review any condition of any permit issued under this program.
 - e. Within a reasonable time following the filing of the petition for review, the AQP will issue an order either granting or denying the petition for review.
 - (1) To the extent review is denied, the conditions of the final permit decision become final AQP action. If the AQP denies review, the permit applicant and the person(s) requesting review must be notified through means that are adequate to assure reasonable access to the decision, which may include mailing a notice to each party.

(2) If granted, a review hearing shall be conducted following the procedures outlined within 40 M.P.T.L. ch. 2.

f. The AQP, at any time prior to the rendering of the decision to grant or deny review of a permit decision, may, upon notification to any interested parties, withdraw the permit and prepare a new draft permit addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part.

g. A petition to the AQP under this section is a prerequisite to seeking judicial review of the final agency action. For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the AQP and administrative review procedures are exhausted. A final permit decision will be issued by the AQP:

- (1) when the AQP issues notice to the parties that review has been denied;
- (2) when the AQP issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or,
- (3) upon the completion of remand proceedings if the proceedings are remanded, unless the AQP's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

§ 2. Judicial Review

After exhausting the available administrative remedies, a Person dissatisfied with a final decision of the AQP is entitled to Tribal Court review provided that a complaint is filed pursuant to the procedures set forth in the Tribal Administrative Procedures Act (40 M.P.T.L.).

CHAPTER 4. COMPLIANCE TESTING AND MONITORING

§ 1. Purpose and Applicability

a. Purpose - This section outlines compliance testing and monitoring requirements to be followed if stipulated within your Facility's permit.

b. Applicability

- (1) Owners/Operators with permit conditions specifying compliance testing and monitoring must follow the procedures outlined within this section, except that;
- (2) If the Owner/Operator is subject to a Federal standard specified within 40 CFR Parts 60, 61, 62 or 63 which requires testing of the same Emissions Unit(s), the AQP will accept that compliance testing and monitoring provided that the AQP is copied on all required notifications plans and reports submitted to EPA.

§ 2. Testing, Enforcement, Inspection and Complaints

a. When required by a federal standard, or requested by the AQP to determine compliance or non-compliance with any air pollution control plan, rule or regulation, the source Owner/Operator must submit an acceptable report of measured emissions within thirty (30) Days of testing. The source Owner/Operator shall bear the cost of measurement and preparing the report of measured emissions. Failure of such person to submit a report acceptable to the AQP within the stated time shall be sufficient reason for the AQP to suspend or deny a permit. In the event a source Owner/Operator can demonstrate to the AQP such time is not sufficient, he/she may request an extension in writing and be granted a thirty (30) Day extension.

b. A source Owner/Operator shall submit a detailed description of proposed testing protocols to the AQP for approval not less than thirty (30) Days prior to the test. Such notification shall include, but is not limited to, the following:

- (1) the Facility name, address, telephone number, and contact;
- (2) the name of the contractor testing company, company contact, telephone number and email information;

- (3) the reasons for performing the compliance stack test;
- (4) a complete test program description;
- (5) a description of the process or device to be tested;
- (6) a description of the operational mode of the process during the testing period;
- (7) a list of operational and process data to be collected;
- (8) a list of test methods to be used;
- (9) a description of any requested alternatives or deviations from standard EPA testing methods or from the requirements of this part;
- (10) a list of calibration methods and sample data sheets;
- (11) a description of pre-test preparation procedures;
- (12) a list of sample collection and analysis methods;
- (13) a description of quality assurance procedures specific to the testing;
- (14) a description of standard operating procedures (SOPs) for laboratory analysis of samples, or reference to SOPs already on file with the division; and
- (15) a description of Facility safety/emergency response procedures applicable to the area of the Facility in which the test will occur.

c. The source Owner/Operator shall allow the AQP, or a designated representative, free access to observe the stack testing being conducted. No person shall conceal an emission by the use of air or other gaseous diluent to achieve compliance with an Emission Standard or Emission Limitation, which is based on the concentration of a contaminant in the gases emitted through a stack.

d. Emission testing, sampling and analytical determinations to ascertain compliance with this section shall be conducted in accordance with test methods acceptable to the AQP and U.S. EPA. The Reference Methods contained in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be considered acceptable test methods for those sources and contaminants for which they are expressly applicable.

e. Enforcement of these rules and regulations shall be performed by the AQP. AQP staff will also be responsible for inspecting the facilities annually, any unannounced audits, or based on any complaints received. Findings shall be recorded and a copy given to both the Facility and the AQP. For the purpose of ascertaining compliance or noncompliance with any air pollution control plan, rule or regulation, the AQP may conduct separate or additional emission tests on behalf of the Tribe. A source Owner/Operator shall provide sampling ports, scaffolding, and other pertinent equipment required for emission testing. The Facility shall bear the costs of such equipment.

§ 3. Continuous Emissions Monitoring Systems (CEMS)

a. CEMS continuously measure concentrations of pollutants emitted into the atmosphere in exhaust gases from combustion or industrial processes. CEMS components could include:

- (1) A NO_x pollutant concentration monitor;
- (2) A CO pollutant concentration monitor;
- (3) A volumetric flow monitor;
- (4) A diluent gas (oxygen (O₂) or CO₂) monitor; or
- (5) A computer-based data acquisition and handling system for recording and performing calculations with the data.

b. The Owner/Operator of a source that is required by Federal regulation or by the AQP to monitor emissions using CEMS must install and operate the CEMS, and assure the quality of the data for emissions and volumetric flow at each such unit.

c. At least ninety (90) Days prior to the installation of a CEMS, the Owner/Operator shall submit a CEMS monitoring plan to the AQP and when applicable, the Administrator, including, but not limited to, the following:

- (1) A complete description of the emission monitoring system including, but not limited to:
 - (a) the identity of the CEMS vendor, including the company name, address, telephone number and email information;
 - (b) the identity of the manufacturer, model number, measurement method employed, and range of each of the major components or analyzers being used;
 - (c) a description of the sample gas conditioning system;
 - (d) a description and diagram showing the location of the monitoring system, including sampling probes, sample lines, conditioning system, analyzers, and data acquisition system; and,
 - (e) a description of the data acquisition system, including sampling frequency, and data averaging methods.
- (2) The mathematical equations used by the data acquisition system, including the value and derivation of any constants, to calculate the emissions in terms of the applicable Emission Standards;
- (3) An example of the data reporting format;
- (4) A description of the instrument calibration methods, including the frequency of calibration checks and manual calibrations, and path of the sample gas through the system;
- (5) The means used by the data acquisition system of determining and reporting periods of excess emissions, monitor downtime, and out-of-control periods; and,
- (6) A description of the means used to provide for short-term and long-term emissions data storage.

d. The Owner/Operator shall conduct performance specification testing of the CEMS in accordance with the following:

- (1) For a CEMS monitoring opacity or gaseous emissions, the performance specification requirements of 40 CFR 60, Appendix B shall apply;
- (2) All performance specification testing shall be conducted within one hundred eighty (180) Days of the CEMS equipment initial startup;
- (3) The AQP and, when applicable, the Administrator shall be notified of the date or dates of the performance specification testing at least thirty (30) Days prior to the scheduled dates so that they may be present during the testing; and,
- (4) A written report summarizing the results of the testing shall be submitted to the AQP and, when applicable, the Administrator within thirty (30) Days of the completion of the test.

e. Emissions Calculated for Periods of Missing Data

Annual Availability (%) of Monitor or System	Number of Hours Missing (N)	Value Substituted for Each Missing Hour
Greater than or equal to 95%	N is less than or equal to 24 hours	Average of the hours recorded before and after missing period
	N is greater than 24 hours	90th percentile value recorded in previous 30 days of service or the before/after value, whichever is greater
Less than 95% but greater than or equal to 90%	N is less than or equal to 8 hours	Average of the hours recorded before and after missing period
	N is greater than 8 hours	95th percentile value recorded in previous 30 days of service or the before/after value, whichever is greater
Less than 90%	N is greater than 0 hours	Maximum value recorded in previous 30 days of service

f. Certification Requirements – The monitoring plan requires the following performance certification tests for CEMS as per the schedule in the unit's operating permit:

- (1) a 7-day calibration error test for each monitor;
- (2) a linearity check for each pollutant concentration monitor;
- (3) a relative accuracy test audit for each monitor;
- (4) a bias test for each flow monitor, and the NO_x or CO CEMS;
- (5) a cycle time test for each pollutant concentration monitor;
- (6) an interference test for flow monitors; and,
- (7) an accuracy test for fuel flow meters, as applicable.

g. Quality Assurance/Quality Control

- (1) The Operator must perform periodic performance evaluations of the equipment, including calibration error tests, interference tests for flow monitors, relative accuracy test audits and bias tests.
- (2) The Owner/Operator must develop and implement a written quality assurance/quality control plan for each system. The quality control plan must include complete, step-by-step procedures and operations for calibration checks, calibration adjustments, preventive maintenance, audits, and recordkeeping and reporting. The quality assurance plan must include procedures for conducting periodic performance tests.

§ 4. Control Equipment/Catalyst Monitoring Plans

a. Owners/Operators of an Emissions Unit that relies on air pollution control equipment to comply with an Emission Limitation specified in a permit shall provide a written monitoring plan detailing all maintenance, monitoring, and any sampling/testing specified by the manufacturer, to ensure the continued effectiveness of the control equipment.

b. The Owner/Operator shall submit the Control Equipment Monitoring Plan as part of the application for a permit.

c. The Control Equipment Monitoring Plan shall include the following information for each device:

- (1) the type of control device;
- (2) the manufacturer of the control device;
- (3) the model and serial number of the control device, if known;
- (4) the pollutant(s) controlled by the device;
- (5) a description of the control device and how it operates in the process;
- (6) the capture efficiency of the device and its method of determination;
- (7) the control efficiency of the device and its method of determination;
- (8) the operational parameters of the device that are or will be monitored, such as temperature, pressure, differential pressure, pH, and flowrate, the normal range for each parameter monitored, and the range of each parameter during startup or shutdown conditions, if different;
- (9) a description of any data recording or recordkeeping, parameter setpoints and alarms, and corresponding operator responses to malfunctions of the device to prevent uncontrolled emissions of air pollution;
- (10) the manufacturer's recommended procedures for operation of the device;
- (11) the manufacturer's recommended scheduled for service, maintenance, and calibration of the device; and
- (12) any other operational parameters that affect the ability of the device to control air pollution.

d. If the air pollution control device uses a catalyst as part of its operation to reduce the volume or concentration of pollutant passing through it, the owner or operator shall submit a Catalyst Management Plan for the catalytic device which includes the following:

- (1) the information listed in (c)(1) - (12), above;
- (2) a description of the method for catalyst sampling and determination of catalyst activity; and

(3) the frequency of catalyst replacement.

e. If the Owner/Operator determines that the information and procedures documented in the Control Equipment Monitoring Plan or Catalyst Management Plan need to be changed at any time to accurately represent the activities performed to maintain the control equipment, the owner or operator shall submit a revised monitoring or management plan, as applicable, to the AQP in writing.

Appendix I
Case-By-Case Control Technology Review Procedures
Including BACT Analysis Guidance
For NSR Pollutant Control
At Minor Sources

General

For its review, the MPTN AQP will consider local air quality needs, typical control technology used by similar sources in surrounding areas, anticipated economic growth in the area and cost-effective control alternatives. At a minimum, the AQP will require control technology that assures that the NAAQS are achieved and that each affected emissions unit will comply with all requirements of 40 CFR Parts 60, 61 and 63 that apply.

The required control technology resulting from such a review may range from no control technology, to control technology that is less stringent than the reasonably available control technology (RACT) level of control (which is typically required for existing major sources in nonattainment areas), to technology that is the BACT level of control (which is the level required for new major sources and major modifications in attainment areas). The control technology chosen will depend on the air quality needs of the area, other applicable regulatory programs of the Act, and technical and economic feasibility.

Furthermore, and based on the results of the control technology review, the emission limitations required by the reviewing authority may consist of numerical limits on the quantity, rate or concentration of emissions, pollution prevention techniques, design standards, equipment standards, work practice standards, operational standards or any combination thereof. If it is technically and economically feasible, the AQP must require a numerical limit on the quantity, rate or concentration of emissions for each affected emissions unit at your source.

For a new minor source that is subject to this rule, the case-by-case control technology review will be conducted for all Affected Emissions Units that emit or have the potential to emit the pollutant(s) for which the source is subject to this regulation. (*See 76 Fed. Reg. 38960 (July 1, 2011)*)

Types of Controls

1. *Existing Control Technology*: a control technology which has been proven in practice for the source category. This should include both emission limitations imposed by other jurisdictions and test results which reflect what was actually achieved in performance.
2. *Technically Feasible Alternatives*: a control technology which has been demonstrated in practice on other source categories, but has not been demonstrated in practice on the class or category of source under review. Applying a control technology to a source category in which it has not been demonstrated is called control technology transfer.
3. *Innovative Control Technology*: a control technology that has never been applied to any source on a full scale, continuously operating basis. This technology may be chosen on the basis of pilot scale or short-term testing. In selecting an innovative control technology, there must be some reasonable level of expectation that the innovative options will outperform the demonstrated control. Innovative control is not mandated but may be approved if submitted by the applicant.
4. *Using Production Processes, Fuels, and Coatings That Are Inherently Lower Polluting*: these options should be evaluated alone and in combination with add-on pollution control devices. Examples include adjusting raw material feed to reduce emissions, using methanol for low NOx applications, and using powder coatings instead of solvent borne coatings where technically feasible. In considering these options, it is especially important to work closely with the appropriate permitting officials who may allow some information to be treated as confidential or proprietary.
5. *Specific Design or Operational Parameters*: these options may include such factors as combustion zone temperature, combustion zone residence time, automatic combustion controls, pressure drop across control equipment, etc.

Identification of Control Alternatives

There are numerous sources of information on control alternatives for various source categories. The following sources of information will be checked by the MPTN AQP. Hence they should similarly be considered by the applicant.

1. RACT/BACT/LAER Clearinghouse

All applicants should check EPA's BACT/LAER Clearinghouse (<http://cfpub.epa.gov/RBLC/>) prior to submitting an application. The AQP will review this information and compare the equipment proposed to any up-to-date references of similar types of equipment within this database.

2. State Air Quality Permits

Applicants should be aware of permits issued for their industry. The AQP will review permits recently issued by surrounding state programs.

3. Permitting Engineers

The applicant's air permitting consultant will likely have experience with other jurisdictional determinations and will often be the best source of information regarding similar case-by-case determinations.

4. Control Equipment vendors

Vendors have information on the most recent control technology, cost information, emission guarantees, and test results. Provided that the applicant has interacted with multiple vendors, this will likely be the best source of information for the applicant.

5. Trade Associations

Associations serving one sector often maintain permitting and emission test reports. Examples include the National Council for Air and Stream Improvement (NCASI) for pulp and paper industry, Electric Power Research Institute (EPRI) for electric generators, and American Gas Cleaning Institute (AGCI) for information on air pollution control equipment.

6. Agencies or Companies Outside the United States

Where there is reason to believe that better controls are being used outside the United States, these groups should be consulted for information on the most recent advances in control technologies, control costs, test results, etc.

7. Inspection/Performance Test Reports

Recent test data may be useful in establishing emission limitations for sources. Inspection and performance test data may also reveal potential problems with a control technology or specific equipment.

8. Technical Papers and Journals

Responsibilities

The applicant is responsible for proposing control technologies for each affected emissions unit. The AQP is responsible for confirming the suitability of the control technology with respect to protecting local and regional air quality. A top-down Best Available Control Technology (BACT) analysis, if requested, places the additional responsibility on the applicant to present and defend their proposal.

Applicant

When designing a project which will necessitate the installation of a new, modified or replacement source of NSR emissions the applicant should, at a minimum, pursue utilizing the existing control technology which will result in the lowest emissions. Prospective vendors should be able to help project managers identify such equipment and may even be able to provide references concerning recently permitted facilities where the same or similar equipment had been installed.

Proposing the lowest emitting existing technology will generally satisfy the requirement and greatly streamline the review process. If the lowest emitting equipment will not be proposed the applicant should familiarize himself with the requirements specified below for Analysis of BACT and anticipate the AQP's requirement to complete such a BACT review.

MPTN AQP

When considering applications for minor NSR permits, the case-by-case control technology review conducted by the AQP will, under most circumstances, be straightforward. In general, the AQP will rely predominantly on recent determinations identified for similar sources within permits issued by surrounding jurisdictions. Such determinations typically represent the most current accepted existing controls. Therefore, the case-by-case review could be as simple as the AQP comparing those controls to that proposed by the applicant.

However, in cases where the applicant's proposed controls are not comparable to those recently permitted, when other regulatory programs require it, or simply if the AQP believes that a source may cause a disproportionate influence on the surrounding air quality, the AQP will require a more stringent level of control. Therefore, when required by the

AQP the applicant must provide the more detailed analysis of control options as described below under the heading Analysis of Best Available Control Technology (BACT).

Analysis of Best Available Control Technology (BACT)

BACT is a top-down analysis that may be required by the AQP. Such an analysis is not limited to a simple review of existing controls for the source category in question. The starting assumption for the top-down approach is that the most stringent control possible is BACT. The burden of proof for applying a less stringent control rests in the applicant's case-specific evaluation of the control alternatives. If the most stringent control for a specific pollutant is selected, the BACT evaluation for that pollutant is stopped. However, further evaluation of that control option's effectiveness on other pollutants may be required.

The applicant must first identify the most stringent control possible (usually referred to as Lowest Achievable Emission Rate (LAER)) and then quantify emissions. At this step of the BACT review process, no technically feasible alternative should be ruled out as a possible BACT candidate. The review must be broad enough to take into account controls applied to similar source categories and new control technologies. Once the applicant has identified all appropriate control alternatives, the applicant should rank them in order of control effectiveness, with the most effective control alternative at the top. If the most stringent control for a specific pollutant is selected, the BACT evaluation for that pollutant is stopped. However, further evaluation of that control option's effectiveness on other pollutants may be required.

If the applicant proposes using a control technology less effective than the top case the applicant will need to provide a detailed analysis to justify that proposal. Three criteria may be used in such an analysis to assess:

1. energy impacts
2. environmental impacts
3. economic impacts

Since the AQP will consider these criteria in its decision making process, it is important that applicants provide fully documented estimates of the emissions using alternative control as well as quantitative and qualitative environmental, energy, and economic impacts as described below under the heading "Impact Analysis Criteria." The evaluation process should be conducted in an incremental manner, from the top-down. The first step in this approach is to determine, for the emission source in question, the most stringent control available for a similar or identical source or source category. If it can be shown that this level of control is technically or economically inappropriate for the source in question, then the applicant should determine the next most stringent level of control and evaluate it similarly. This process continues until the BACT level under consideration cannot be eliminated by any substantial or unique technical, environmental, or economic objections. Thus, the top-down approach shifts the burden of proof to the applicant who must justify why the proposed source is unable to apply the best technology available.

The applicant should prepare a chart for each pollutant and for each emissions unit, or small group of units in the BACT analysis. The chart should consist of an array of control alternatives, showing control efficiencies, expected emissions, economic costs, environmental benefits, energy costs, and other costs. These charts will be used to compare the control alternatives and to focus the selection of a control option as BACT. Failing to address the top case in an attempt to avoid stringent controls will result in the process being delayed while the applicant is required to reassess alternatives against the control option the permitting authority determines to be the top case.

Impact Analysis Criteria

Energy Impacts

While energy impacts may also represent a significant contribution of economic impact analysis, the intent here is to assess impacts specific to the increased energy required for the control technology. The analysis should weigh the energy impacts of a given control technique or technology by estimating its direct energy consumption compared with that of alternatives. The energy requirements of the control options should be shown in terms of total and incremental (units of energy per ton of reduction) energy costs. Examples of factors which may be considered as a part of the energy impacts analysis are:

- Local availability of required energy
- Off-site emissions generated as a result of an energy increase

Environmental Impacts

The applicant should estimate the net environmental impact associated with each control alternative. Both beneficial impacts and adverse impacts should be discussed and quantified, where possible. The analyses should be presented in the form of the incremental impact of each control alternative relative to the most stringent system identified as a control alternative.

The environmental impacts analysis is not to be confused with the *air quality impact analysis*, which is conducted to demonstrate that the source (using the level of control eventually selected as BACT) will not cause or contribute to a violation of any applicable NAAQS or PSD increment.

When weighing environmental impacts, the applicant should consider all Air Pollutants and the impact on other environmental media affected by the control alternative. This includes Air Pollutants which are not currently regulated under the Clean Air Act, but which may have a significant environmental impact.

The applicant should identify any significant or unusual environmental impacts associated with a control alternative that have the potential to affect the selection or rejection of a control alternative. Some control technologies may have potentially significant secondary [other than air quality] environmental impacts. Scrubber effluent, for example, may affect water quality and land use; and, similarly, technologies using cooling towers may affect visibility.

Other examples of secondary environmental impacts may include hazardous waste discharges, such as spent catalysts or contaminated carbon. Generally, these types of environmental concerns become important when sensitive site-specific receptors exist or when the incremental emissions reduction potential of the top control option is only marginally greater than the next most effective option. However, the fact that a control device creates liquid and solid waste that must be disposed does not necessarily argue against selection of that technology as BACT, particularly if the control device has been applied to similar facilities elsewhere and the solid or liquid waste problem under review is not significantly greater than in those other applications. On the other hand, where the applicant can show that unusual circumstances at the proposed source create greater problems than experienced elsewhere, this may provide a basis for the rejection of the most efficient alternative as BACT.

The following is a brief outline of some of the environmental categories that should be considered during an analysis of environmental impacts.

1. Impacts on air quality
 - visible emissions and visibility impairment
 - toxic Air Pollutants and other non-criteria Air Pollutants
 - odors, etc.
2. Impacts on water quality and water availability (e.g. Use of a water-based air pollution control device in situations where the water supply serving your Facility is stressed).
3. Solid waste disposal impacts
4. Other environmental impacts
5. Noise
6. Steam plumes from cooling towers
7. Potential for accidental releases
8. Reliability (or the potential for malfunction and downtime)

Where approximately the same degree of emission reduction can be achieved by different technologies, preference should be given to the technology that achieves the reduction with the greatest degree of pollution prevention.

Economic Impacts

In evaluating the economics of various BACT control options, primary consideration should be given to the cost effectiveness of an option and not to the economic situation of the source applicant. For control technologies that have been proven for the source category under review, the economic impact of requiring this technology on a source under review is less important than the cost effectiveness. There are two measures of cost effectiveness. These include: average cost effectiveness (total annualized costs of control divided by annual emissions reduction, or the difference between the baseline emission rate and the controlled emission rate), and incremental cost effectiveness (dollars per incremental ton removed). Baseline emissions used to determine the degree of pollution reduction must be based on a realistic scenario of the upper bound of uncontrolled emissions from the source, and must be derived in a manner consistent with the procedures specified in EPA's Draft New Source Review Workshop Manual (October 1990). Emission reduction credit can be taken for using inherently lower polluting processes.

When comparing two control devices with a similar level of control for the same pollutants, incremental cost may be used in conjunction with the average cost effectiveness to justify the elimination of the more stringent control level. However, incremental costs alone should not be used as a basis for justifying the elimination of a control option.

In the analysis of economic impacts, the applicant should estimate the approximate costs of the different emission control alternatives. The analysis should include a complete explanation of procedures used for assessing the economic impacts, any supporting data, and an itemization and explanation of all costs. Credit for tax incentives should be included, along with credits for product recovery savings and by-product sales generated from the use of the control system.

In evaluating the relative cost effectiveness of alternatives, calculations should be based on allowable emissions at maximum design capacity for 8,760 hours per year. If permit condition(s) limit operation to less than 8,760 hours per year, the analysis may also include data based on the allowed operation.

Annual costs should include the operation and maintenance cost plus the annualized cost for capital and design engineering. The capitalization should be based on the average useful life of equipment. The economic life of a control system typically varies between ten (10) and twenty (20) years and should be determined consistent with data from EPA cost support documents and IRS Class Life Asset Depreciation Range System (publication, #534).

Applicants are responsible for fully documenting all relevant cost information. Vendor quotes or other reliable means should be the primary basis for estimates.

A complete economic analysis should compare costs of controls both within the specific source category under review and, as a comparison of costs, for other industries, on the basis of dollars per ton of pollutant removed. The analysis should also represent the control option costs in terms of operations at full capacity (8,760 hours per year) and the control cost as a percent of the total project cost. If permit condition(s) limit operation to less than 8,760 hours per year, the analysis may also include data based on the allowed operation.

The analysis must be source specific, but should also be general enough to consider normal costs for doing business in a given field. A demonstration by an applicant that it cannot afford to construct a Facility using the most stringent technology does not allow the more stringent technology to be rejected as BACT. Rather it is a statement of whether the applicant is financially capable of conducting business in that field.

Enforceability

The BACT determination for each pollutant must result in a federally enforceable permit. BACT must be specified not only in terms of a control technology, but also in terms of emission limits and/or design, equipment, work practice, or operational standards that are federally enforceable.

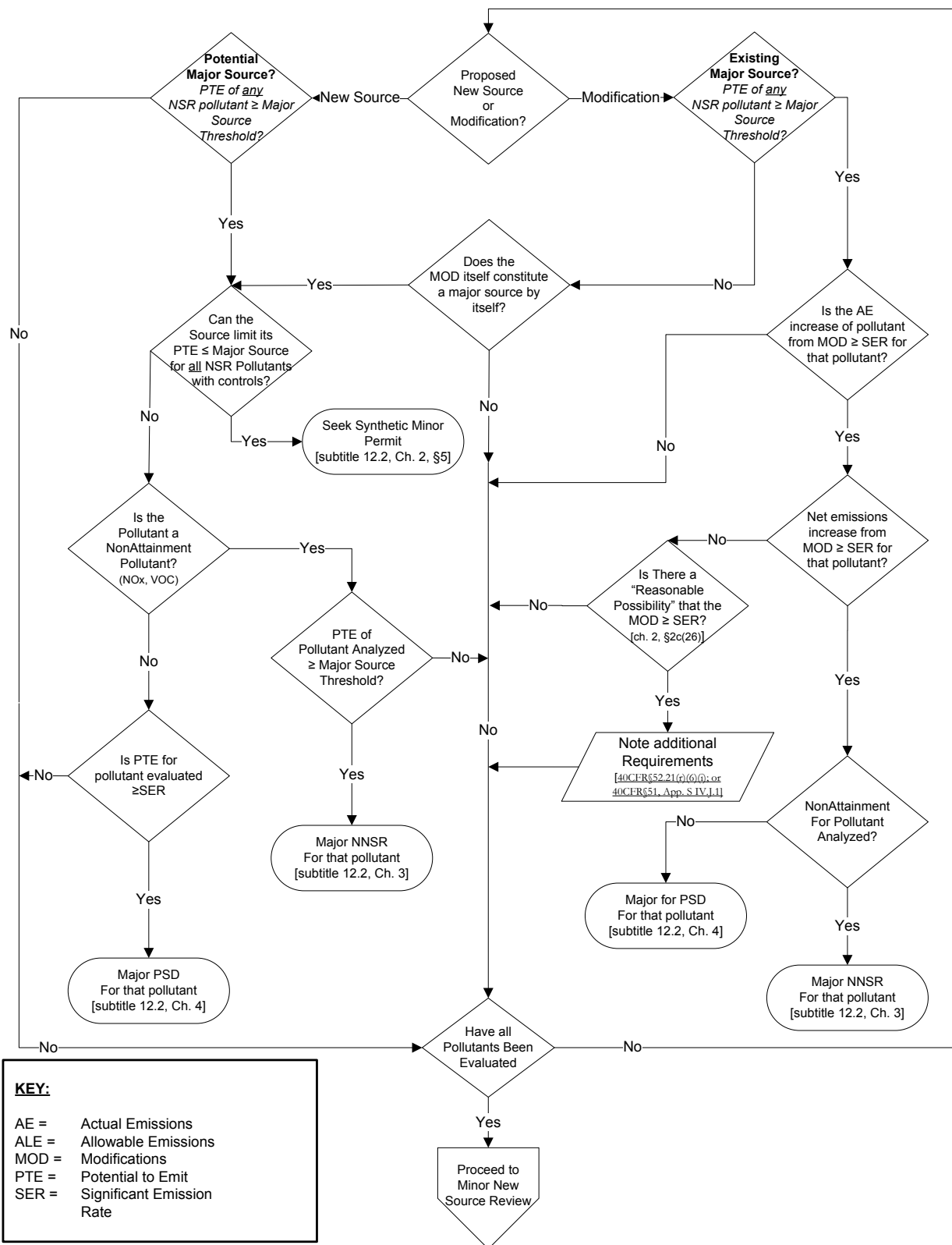
The BACT limits must be point specific and must include appropriate averaging times, reference test methods, and a method for ensuring continuous compliance.

Appendix II

Applicability Flow Charts

Step 1: MPTN Air Quality Program Permit Applicability Determination

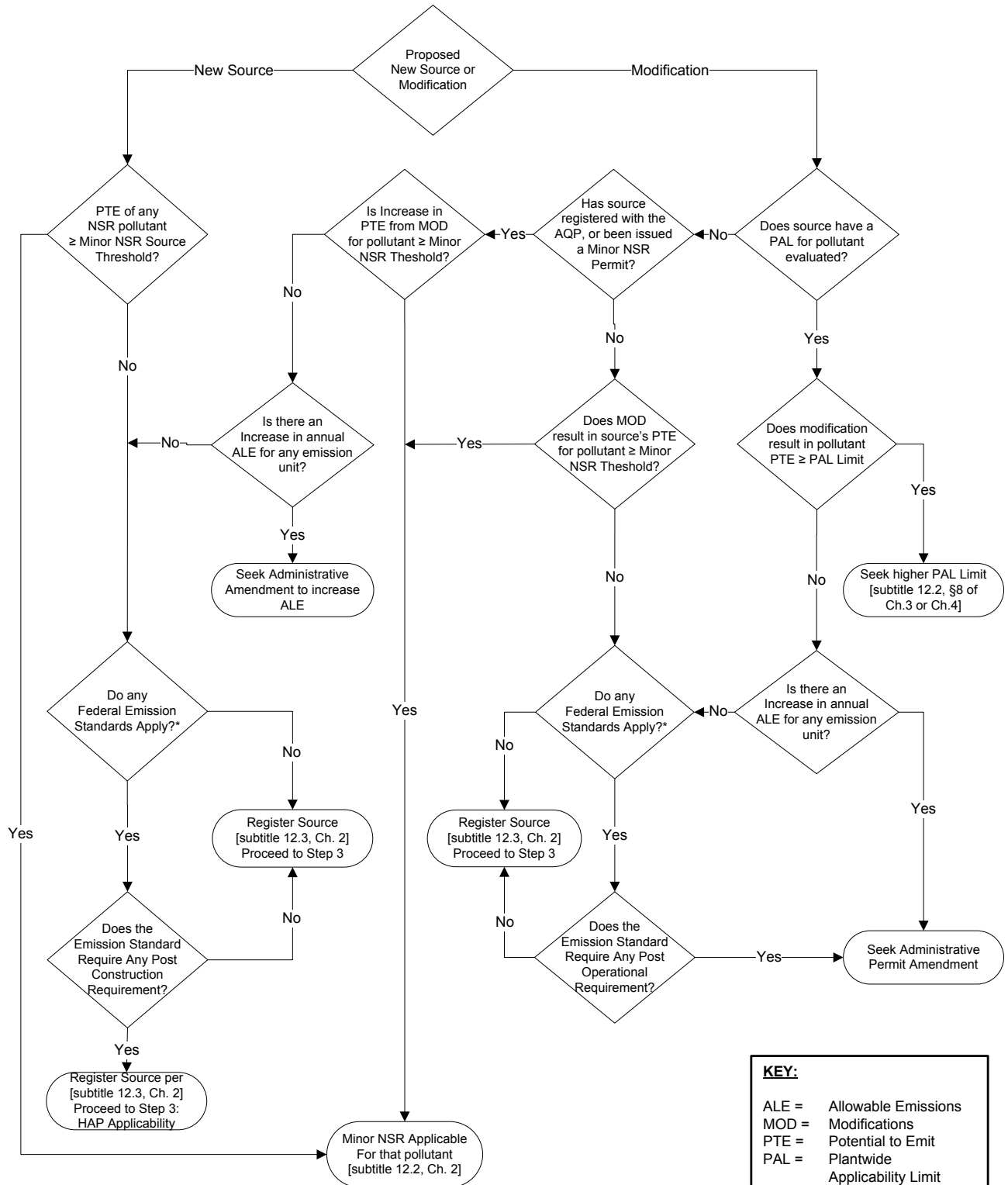
Evaluate Each NSR Pollutant For Major Source Applicability



KEY:
 AE = Actual Emissions
 ALE = Allowable Emissions
 MOD = Modifications
 PTE = Potential to Emit
 SER = Significant Emission Rate

Step 2: MPTN Air Quality Program Permit Applicability Determination

Evaluate Each NSR Pollutant For Minor Source Applicability



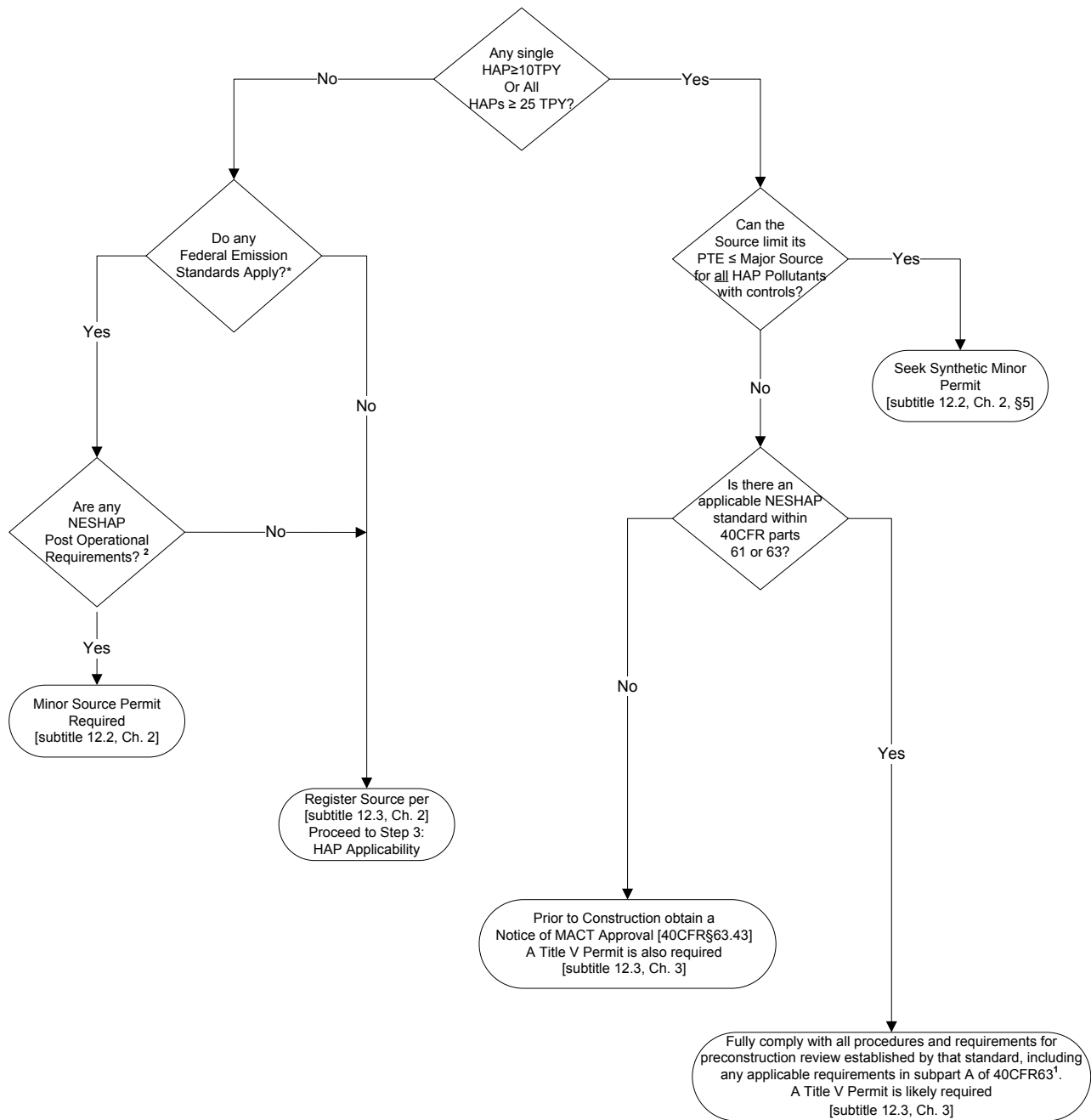
KEY:

- ALE = Allowable Emissions
- MOD = Modifications
- PTE = Potential to Emit
- PAL = Plantwide Applicability Limit
- NSPS = New Source Performance Standards

* See subtitle 12.2, Ch. 1, §3b(8)

Step 3: MPTN Air Quality Program Permit Applicability Determination

Evaluate Applicability for HAP Pollutants



¹ Pre-purchase and Preconstruction requirements likely apply. MPTN AQP recommends that the owner/operator contact them prior to entering into any equipment purchase contracts even if a New Source Review Permit is not required.

* See subtitle 12.2, Ch. 1, §3b(8)

Appendix III

40 CFR Part 51
Appendix S

Disclaimer

This is not an official legal edition of the CFR. What follows had been extracted from the Electronic Code of Federal Regulations (e-CFR) on February 5, 2018 and formatted to facilitate reference. The e-CFR is an editorial compilation of CFR material and Federal Register amendments produced by the National Archives and Records Administration's Office of the Federal Register (OFR) and the Government Publishing Office. The OFR updates the material in the e-CFR on a daily basis.

Current eCFR Version of Appendix S

Appendix S to Part 51—Emission Offset Interpretative Ruling

I. Introduction

This appendix sets forth EPA's Interpretative Ruling on the preconstruction review requirements for Stationary Sources of air pollution (not including indirect sources) under 40 CFR subpart I and section 129 of the Clean Air Act Amendments of 1977, Public Law 95-95, (note under 42 U.S.C. 7502). A major new source or major modification which would locate in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region or which would locate in an area designated in 40 CFR part 81, subpart C, as nonattainment for a pollutant for which the source or modification would be major may be allowed to construct only if the stringent conditions set forth below are met. These conditions are designed to insure that the new source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions (*emission offsets*) will be obtained from existing sources; and that there will be progress toward achievement of the NAAQS.

For each area designated as exceeding a NAAQS (nonattainment area) under 40 CFR part 81, subpart C, or for any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region, this Interpretative Ruling will be superseded after June 30, 1979 (a) by preconstruction review provisions of the revised SIP, if the SIP meets the requirements of Part D, Title 1, of the Act; or (b) by a prohibition on construction under the applicable SIP and section 110(a)(2)(I) of the Act, if the SIP does not meet the requirements of Part D. The Ruling will remain in effect to the extent not superseded under the Act. This prohibition on major new source construction does not apply to a source whose permit to construct was applied for during a period when the SIP was in compliance with Part D, or before the deadline for having a revised SIP in effect that satisfies Part D.

The requirement of this Ruling shall not apply to any major Stationary Source or major modification that was not subject to the Ruling as in effect on January 16, 1979, if the owner or operator:

- A. Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;
- B. Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and
- C. Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

II. Initial Screening Analyses and Determination of Applicable Requirements

A. *Definitions*—For the purposes of this Ruling:

1. **Stationary source** means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.
2. (i) **Building, structure, facility or installation** means 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) except the activities of any vessel. 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 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).
- (ii) Notwithstanding the provisions of paragraph II.A.2(i) of this section, building, structure, facility or installation means, for onshore activities under SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that 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 adjacent if they are located on the same surface site; or

if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph II.A.2(ii), has the same meaning as in 40 CFR 63.761.

3. **Potential to emit** means 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 only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.
4. (i) **Major stationary source** means:
 - (a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of a regulated NSP pollutant (as defined in paragraph II.A.31 of this Ruling), except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the Act, according to paragraphs II.A.4(i)(a)(1) through (8) of this Ruling.
 - (1) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.
 - (2) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.
 - (3) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.
 - (4) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.
 - (5) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator)
 - (6) 70 tons per year of PM-10 in any serious nonattainment area for PM-10;
 - (7) 70 tons per year of PM2.5 in any serious nonattainment area for PM2.5.
 - (8) 70 tons per year of any individual PM2.5 precursor (as defined in paragraph II.A.31 of this Ruling) in any Serious nonattainment area for PM2.5.
 - (b) For the purposes of applying the requirements of paragraph IV. H of this Ruling to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in paragraphs II.A.4(i)(b)(1) through (6) of this Ruling apply in areas subject to subpart 2 of part D, title I of the Act.
 - (1) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.
 - (2) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.
 - (3) 100 tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region.
 - (4) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.
 - (5) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.
 - (6) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or
 - (c) Any physical change that would occur at a stationary source not qualifying under paragraph II.A.4(i)(a) or (b) of this Ruling as a major stationary source, if the change would constitute a major stationary source by itself.
- (ii) A major stationary source that is major for volatile organic compounds or nitrogen oxides is major for ozone.

- (iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this ruling whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:
- (a) Coal cleaning plants (with thermal dryers);
 - (b) Kraft pulp mills;
 - (c) Portland cement plants;
 - (d) Primary zinc smelters;
 - (e) Iron and steel mills;
 - (f) Primary aluminum ore reduction plants;
 - (g) Primary copper smelters;
 - (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
 - (i) Hydrofluoric, sulfuric, or nitric acid plants;
 - (j) Petroleum refineries;
 - (k) Lime plants;
 - (l) Phosphate rock processing plants;
 - (m) Coke oven batteries;
 - (n) Sulfur recovery plants;
 - (o) Carbon black plants (furnace process);
 - (p) Primary lead smelters;
 - (q) Fuel conversion plants;
 - (r) Sintering plants;
 - (s) Secondary metal production plants;
 - (t) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
 - (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 - (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (w) Taconite ore processing plants;
 - (x) Glass fiber processing plants;
 - (y) Charcoal production plants;
 - (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
 - (aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.
5. (i) **Major modification** means any physical change in or change in the method of operation of a major stationary source that would result in:
- (a) A significant emissions increase of a regulated NSR pollutant (as defined in paragraph II.A.31 of this Ruling); and
 - (b) A significant net emissions increase of that pollutant from the major stationary source.
- (ii) Any significant emissions increase (as defined in paragraph II.A.23 of this Ruling) from any emissions units or net emissions increase (as defined in paragraph II.A.6 of this Ruling) at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.
- (iii) A physical change or change in the method of operation shall not include:
- (a) Routine maintenance, repair, and replacement;

- (b) Use of an alternative fuel or raw material by reason of an order under section 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 pursuant to the Federal Power Act;
- (c) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;
- (d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (e) Use of an alternative fuel or raw material by a stationary source which:
 - (1) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or §51.166; or
 - (2) The source is approved to use under any permit issued under this ruling;
- (f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or §51.166;
- (g) Any change in ownership at a stationary source.
- (iv) For the purpose of applying the requirements of paragraph IV.H of this Ruling to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject with respect to ozone to subpart 2, part D, title I of the Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.
- (v) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act.
- (vi) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph IV.K of this ruling for a PAL for that pollutant. Instead, the definition at paragraph IV.K.2(viii) of this Ruling shall apply.
- (vii) Fugitive emissions shall not be included in determining for any of the purposes of this Ruling whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in paragraph II.A.4(iii) of this Ruling.

Effective Date Note: At 76 FR 17554, Mar. 30, 2011, part 51, appendix S, paragraph II.A.5 (vii) is stayed indefinitely.

- 6. (i) **Net emissions increase** means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:
 - (a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph IV.J of this Ruling; and
 - (b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph II.A.6(i)(b) shall be determined as provided in paragraph II.A.30 of this Ruling, except that paragraphs II.A.30(i)(c) and II.A.30(ii)(d) of this Ruling shall not apply.
- (ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
 - (a) The date five years before construction on the particular change commences and
 - (b) The date that the increase from the particular change occurs.

- (iii) An increase or decrease in actual emissions is creditable only if the reviewing authority has not relied on it in issuing a permit for the source under this Ruling, which permit is in effect when the increase in actual emissions from the particular change occurs.
 - (iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
 - (v) A decrease in actual emissions is creditable only to the extent that:
 - (a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
 - (b) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;
 - (c) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51.165; and
 - (d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
 - (vi) 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.
 - (vii) Paragraph II.A.13(ii) of this Ruling shall not apply for determining creditable increases and decreases or after a change.
7. **Emissions unit** means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph II.A.21 of this Ruling. For purposes of this Ruling, there are two types of emissions units as described in paragraphs II.A.7(i) and (ii) of this Ruling.
- (i) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than 2 years from the date such emissions unit first operated.
 - (ii) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph II.A.7(i) of this Ruling.
8. **Secondary emissions** means 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 Ruling, 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 include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.
9. **Fugitive emissions** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
10. (i) **Significant** means, 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

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Ozone: 40 tpy of volatile organic compounds or nitrogen oxides

Lead: 0.6 tpy

Particulate matter: 25 tpy of particulate matter emissions

PM₁₀: 15 tpy

PM_{2.5}: 10 tpy of direct PM_{2.5} emissions; 40 tpy of sulfur dioxide emissions, 40 tpy of Nitrogen oxides emissions, or 40 tpy of Volatile organic compound emissions, to the extent that any such pollutant is defined as a precursor for PM_{2.5} in paragraph II.A.31 of this Ruling.

- (ii) Notwithstanding the significant emissions rate for ozone in paragraph II.A.10(i) of this Ruling, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to subpart 2, part D, title I of the Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.
 - (iii) For the purposes of applying the requirements of paragraph IV.H of this Ruling to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in paragraphs II.A.10(i), (ii), and (v) of this Ruling shall apply to nitrogen oxides emissions.
 - (iv) Notwithstanding the significant emissions rate for carbon monoxide under paragraph II.A.10(i) of this Ruling, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.
 - (v) Notwithstanding the significant emissions rates for ozone under paragraphs II.A.10(i) and (ii) of this Ruling, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act shall be considered a significant net emissions increase.
 - (vi) In any nonattainment area for PM_{2.5} in which a state must regulate Ammonia as a regulated NSR pollutant (as a PM_{2.5} precursor) as defined in paragraph II.A.31 of this Ruling, the reviewing authority shall define “significant” for Ammonia for that area and establish a record to document its supporting basis. All sources with modification projects with increases in Ammonia emissions that are not subject to Section IV of this Ruling must maintain records of the non-applicability of Section IV that reference the definition of “significant” for Ammonia that is established by the reviewing authority in the nonattainment area where the source is located.
11. **Allowable emissions** means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:
- (i) Applicable standards as set forth in 40 CFR parts 60 and 61;
 - (ii) Any applicable State Implementation Plan emissions limitation, including those with a future compliance date; or
 - (iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.
12. **Federally enforceable** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

13. (i) **Actual emissions** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs II.A.13(ii) through (iv) of this Ruling, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph IV.K of this Ruling. Instead, paragraphs II.A.24 and 30 of this Ruling shall apply for those purposes.
- (ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The reviewing authority 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.
- (iii) The reviewing authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
- (iv) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.
14. **Construction** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.
15. **Commence** as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:
- (i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- (ii) 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.
16. **Necessary preconstruction approvals or permits** means those permits or approvals required under Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.
17. **Begin actual construction** means, 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 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.
18. **Lowest achievable emission rate (LAER)** means, for any source, the more stringent rate of emissions based on the following:
- (i) The most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or
- (ii) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.
19. **Resource recovery facility** means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this Ruling.

20. **Volatile organic compounds (VOC)** is as defined in §51.100(s) of this part.
21. **Electric utility steam generating unit** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.
22. **Pollution prevention** means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain “in-process recycling” practices), energy recovery, treatment, or disposal.
23. **Significant emissions increase** means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph II.A.10 of this Ruling) for that pollutant.
24. (i) **Projected actual emissions** means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.
- (ii) In determining the projected actual emissions under paragraph II.A.24(i) of this Ruling before beginning actual construction, the owner or operator of the major stationary source:
- (a) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and
- (b) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and
- (c) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph II.A.30 of this Ruling and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,
- (d) In lieu of using the method set out in paragraphs II.A.24(ii)(a) through (c) of this Ruling, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph II.A.3 of this Ruling.
25. **Nonattainment major new source review (NSR) program** means a major source preconstruction permit program that implements Sections I through VI of this Ruling, or a program that has been approved by the Administrator and incorporated into the plan to implement the requirements of §51.165 of this part. Any permit issued under such a program is a major NSR permit.
26. **Continuous emissions monitoring system (CEMS)** means all of the equipment that may be required to meet the data acquisition and availability requirements of this Ruling, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.
27. **Predictive emissions monitoring system (PEMS)** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.
28. **Continuous parameter monitoring system (CPMS)** means all of the equipment necessary to meet the data acquisition and availability requirements of this Ruling, to monitor process and control device

operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

29. **Continuous emissions rate monitoring system (CERMS)** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).
30. **Baseline actual emissions** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs II.A.30(i) through (iv) of this Ruling.
- (i) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.
- (a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
- (b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.
- (c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
- (d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph II.A.30(i)(b) of this Ruling.
- (ii) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the reviewing authority for a permit required either under this Ruling or under a plan approved by the Administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.
- (a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
- (b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.
- (c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of this chapter, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan.
- (d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
- (e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this

amount if required by paragraphs II.A.30(ii)(b) and (c) of this Ruling.

- (iii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.
- (iv) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph II.A.30(i) of this Ruling, for other existing emissions units in accordance with the procedures contained in paragraph II.A.30(ii) of this Ruling, and for a new emissions unit in accordance with the procedures contained in paragraph II.A.30(iii) of this Ruling.

31. **Regulated NSR pollutant**, for purposes of this Ruling, means the following:

- (i) Nitrogen oxides or any volatile organic compounds;
- (ii) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not limited to, the following:
 - (a) PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in permits issued under this ruling. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.
 - (b) Any pollutant that is identified under this paragraph II.A.31(ii)(2) as a constituent or precursor of a general pollutant listed under paragraph II.A.31(i) or (ii) of this Ruling, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:
 - (1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.
 - (2) Sulfur dioxide and Nitrogen oxides are regulated as precursors to PM_{2.5} in all PM_{2.5} nonattainment areas.
 - (3) For any area that was designated nonattainment for PM_{2.5} on or before April 15, 2015, Volatile organic compounds and Ammonia shall be regulated as precursors to PM_{2.5} beginning on April 15, 2017, with respect to any permit issued for PM_{2.5}, unless the following conditions are met: The state submits a SIP for the Administrator's review containing the state's preconstruction review provisions for PM_{2.5} consistent with §51.165 and a complete NNSR precursor demonstration consistent with §51.1006(a)(3); and such SIP is determined to be complete by the Administrator or deemed to be complete by operation of law in accordance with section 110(k)(1)(B) of the Act by April 15, 2017. If these conditions are met, the precursor(s) addressed by the NNSR precursor demonstration (Volatile organic compounds, Ammonia, or both) shall not be regulated as a precursor to PM_{2.5} in such area. If the Administrator subsequently disapproves the state's preconstruction review provisions for PM_{2.5} and the NNSR precursor demonstration, the precursor(s) addressed by the NNSR precursor demonstration shall be regulated as a precursor to PM_{2.5} under this Ruling in such area as of April 15, 2017, or the effective date of the disapproval, whichever date is later.
 - (4) For any area that is designated nonattainment for PM_{2.5} after April 15, 2015, and was not already designated nonattainment for PM_{2.5} on or immediately prior to such date, Volatile organic compounds and Ammonia shall be regulated as precursors to PM_{2.5} under this Ruling beginning 24 months from the date of designation as nonattainment for PM_{2.5} with respect to any permit issued for PM_{2.5}, unless the following conditions are met: the state submits a SIP for the Administrator's review which contains the state's preconstruction

review provisions for PM_{2.5} consistent with §51.165 and a complete NNSR precursor demonstration consistent with §51.1006(a)(3); and such SIP is determined to be complete by the Administrator or deemed to be complete by operation of law in accordance with section 110(k)(1)(B) of the Act by the date 24 months from the date of designation. If these conditions are met, the precursor(s) addressed by the NNSR precursor demonstration (Volatile organic compounds, Ammonia, or both) shall not be regulated as a precursor to PM_{2.5} in such area. If the Administrator subsequently disapproves the state's preconstruction review provisions for PM_{2.5} and the NNSR precursor demonstration, the precursor(s) addressed by the NNSR precursor demonstration shall be regulated as a precursor to PM_{2.5} under this Ruling in such area as of the date 24 months from the date of designation, or the effective date of the disapproval, whichever date is later.

32. **Reviewing authority** means the State air pollution control agency, local agency, other State agency, Indian tribe, or other agency issuing permits under this Ruling or authorized by the Administrator to carry out a permit program under §§51.165 and 51.166 of this part, or the Administrator in the case of EPA-implemented permit programs under this Ruling or under §52.21 of this chapter.
33. **Project** means a physical change in, or change in the method of operation of, an existing major stationary source.
34. **Best available control technology (BACT)** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, 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 best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR part 60 or 61. If the reviewing authority 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.
35. **Prevention of Significant Deterioration (PSD) permit** means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of §51.166 of this chapter, or under the program in §52.21 of this chapter.
36. **Federal Land Manager** means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

B. *Review of all sources for emission limitation compliance.* The reviewing authority must examine each proposed major new source and proposed major modification¹ to determine if such a source will meet all applicable emission requirements in the SIP, any applicable new source performance standard in part 60 or any national Emission Standard for hazardous air pollutants in part 61 or part 63 of this chapter. If the reviewing authority determines that the proposed major new source cannot meet the applicable emission requirements, the permit to construct must be denied.

¹ Hereafter the term *source* will be used to denote both any source and any modification.

C. *Review of specified sources for air quality impact.* In addition, the reviewing authority must determine whether the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.300 *et seq.* as nonattainment for a pollutant for which the stationary source or modification is major.

D.-E. [Reserved]

F. *Fugitive emission sources.* Section IV.A. of this Ruling shall not apply to a source or modification that 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 such source 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—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (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) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (27) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

G. *Secondary emissions.* Secondary emissions need not be considered in determining whether the emission rates in Section II.C. above would be exceeded. However, if a source is subject to this Ruling on the basis of the direct emissions from the source, the applicable conditions of this Ruling must also be met for secondary emissions. However, secondary emissions may be exempt from Conditions 1 and 2 of Section IV. Also, since EPA's authority to perform or require indirect source review relating to mobile sources regulated under Title II of the Act (motor vehicles and aircraft) has been restricted by statute, consideration of the indirect impacts of motor vehicles and aircraft traffic is not required under this Ruling.

III. Sources Locating in Designated Clean or Unclassifiable Areas Which Would Cause or Contribute to a Violation of a National Ambient Air Quality Standard

A. This section applies only to major sources or major modifications which would locate in an area designated in 40 CFR 81.300 *et seq.* as attainment or unclassifiable in a State where EPA has not yet approved the State preconstruction review program required by 40 CFR 51.165(b), if the source or modification would exceed the following significance levels at any locality that does not meet the NAAQS:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO ₂	1.0 µg/m ³	5 µg/m ³		25 µg/m ³	
PM ₁₀	1.0 µg/m ³	5 µg/m ³			
PM _{2.5}	0.3 µg/m ³	1.2 µg/m ³			
NO ₂	1.0 µg/m ³				
CO			0.5 mg/m ³		2 mg/m ³

B. Sources to which this section applies must meet Conditions 1, 2, and 4 of Section IV.A. of this ruling.² However, such sources may be exempt from Condition 3 of Section IV.A. of this ruling.

C. *Review of specified sources for air quality impact.* For *stable* air pollutants (*i.e.*, SO₂, particulate matter and CO), the determination of whether a source will cause or contribute to a violation of an NAAQS generally should be made on a case-by-case basis as of the proposed new source's start-up date using the source's allowable emissions in an atmospheric simulation model (unless a source will clearly impact on a receptor which exceeds an NAAQS).

For sources of nitrogen oxides, the initial determination of whether a source would cause or contribute to a violation of the NAAQS for NO₂ should be made using an atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO₂ by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

For ozone, sources of volatile organic compounds, locating outside a designated ozone nonattainment area, will be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, then the source may be permitted under the provisions of any State plan adopted pursuant to section 110(a)(2)(D) of the Act until the area is designated nonattainment and a State Implementation Plan revision is approved. If no State plan pursuant to section 110(a)(2)(D) has been adopted and approved, then this Ruling shall apply.

² The discussion in this paragraph is a proposal, but represents EPA's interim policy until final rulemaking is completed.

As noted above, the determination as to whether a source would cause or contribute to a violation of an NAAQS should be made as of the new source's start-up date. Therefore, if a designated nonattainment area is projected to be an attainment area as part of an approved SIP control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation.

D. *Sources locating in clean areas*, but would cause a new violating of an NAAQS. If the reviewing authority finds that the emissions from a proposed source would cause a new violation of an NAAQS, but would not contribute to an existing violation, approval may be granted only if both of the following conditions are met:

Condition 1. The new source is required to meet a more stringent emission limitation³ and/or the control of existing sources below allowable levels is required so that the source will not cause a violation of any NAAQS.

Condition 2. The new emission limitations for the new source as well as any existing sources affected must be enforceable in accordance with the mechanisms set forth in Section V of this appendix.

IV. Sources That Would Locate in a Designated Nonattainment Area

A. *Conditions for approval.* If the reviewing authority finds that the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.300 *et seq* as nonattainment for a pollutant for which the stationary source or modification is major, approval may be granted only if the following conditions are met:

Condition 1. The new source is required to meet an emission Limitation⁴ which specifies the lowest achievable emission rate for such source.

Condition 2. The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the same State as the proposed source are in compliance with all applicable emission limitations and standards under the Act (or are in compliance with an expeditious schedule which is Federally enforceable or contained in a court decree).

³ If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the authority may instead prescribe a design, operational or equipment standard. In such cases, the reviewing authority shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the required submission to EPA (see Part V). Any permits issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under section 304. Hereafter, the term *emission limitation* shall also include such design, operational, or equipment standards.

⁴ If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the authority may instead prescribe a design, operational or equipment standard. In such cases, the reviewing authority shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the required submission to EPA (see Part V). Any permits issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under section 304. Hereafter, the term *emission limitation* shall also include such design, operational, or equipment standards.

Condition 3. Emission reductions (*offsets*) from existing sources⁵ in the area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS.⁶ Except as provided in paragraph IV.G.5 of this Ruling (addressing PM_{2.5} and its precursors), only intrapollutant emission offsets will be acceptable (e.g., hydrocarbon increases may not be offset against SO₂ reductions).

Condition 4. The emission offsets will provide a positive net air quality benefit in the affected area (see Section IV.D. below). Atmospheric simulation modeling is not necessary for volatile organic compounds and NO_x. Fulfillment of Condition 3 and Section IV.D. will be considered adequate to meet this condition.

Condition 5. The permit applicant shall conduct an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

B. *Exemptions from certain conditions.* The reviewing authority may exempt the following sources from Condition 1 under Section III or Conditions 3 and 4. Section IV.A.:

- (i) Resource recovery facilities burning municipal solid waste, and
- (ii) sources which must switch fuels due to lack of adequate fuel supplies or where a source is required to be modified as a result of EPA regulations (e.g., lead-in-fuel requirements) and no exemption from such regulation is available to the source. Such an exemption may be granted only if:
 1. The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Condition 1 under Section III or Conditions 3 and 4 under Section IV.A. and that such efforts were unsuccessful;
 2. The applicant has secured all available emission offsets; and
 3. The applicant will continue to seek the necessary emission offsets and apply them when they become available.

Such an exemption may result in the need to revise the SIP to provide additional control of existing sources.

Temporary emission sources, such as pilot plants, portable facilities which will be relocated outside of the nonattainment area after a short period of time, and emissions resulting from the construction phase of a new source, are exempt from Conditions 3 and 4 of this section.

⁵ Subject to the provisions of paragraph IV.C of this Ruling.

⁶ The discussion in this paragraph is a proposal, but represents EPA's interim policy until final rulemaking is completed.

C. *Baseline for determining credit for emission and air quality offsets.* The baseline for determining credit for emission and air quality offsets will be the SIP emission limitations in effect at the time the application to construct or modify a source is filed. Thus, credit for emission offset purposes may be allowable for existing control that goes beyond that required by the SIP. Emission offsets generally should be made on a pounds per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate. The reviewing agency should specify other averaging periods (e.g., tons per year) in addition to the pounds per hour basis if necessary to carry out the intent of this Ruling. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offsets should be calculated using the actual annual operating hours for the previous one or two year period (or other appropriate period if warranted by cyclical business conditions). Where the SIP requires certain hardware controls in lieu of an emission limitation (e.g., floating roof tanks for petroleum storage), baseline allowable emissions should be based on actual operating conditions for the previous one or two year period (*i.e.*, actual throughput and vapor pressures) in conjunction with the required hardware controls.

1. *No meaningful or applicable SIP requirement.* Where the applicable SIP does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined in accordance with the discussion above regarding operating conditions.

Where the SIP emission limit allows greater emissions than the uncontrolled emission rate of the source (as when a State has a single particulate emission limit for all fuels), emission offset credit will be allowed only for control below the uncontrolled emission rate.

2. *Combustion of fuels.* Generally, the emissions for determining emission offset credit involving an existing fuel combustion source will be the allowable emissions under the SIP for the type of fuel being burned at the time the new source application is filed (*i.e.*, if the existing source has switched to a different type of fuel at some earlier date, any resulting emission reduction [either actual or allowable] shall not be used for emission offset credit). If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved is not acceptable unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emission offset credit for fuel switches.
3. *Emission Reduction Credits from Shutdowns and Curtailments.*
 - (i) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in paragraphs IV.C.3.i.1. through 2 of this section.
 - (1) Such reductions are surplus, permanent, quantifiable, and federally enforceable.
 - (2) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.
 - (ii) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours and that do not meet the requirements in paragraphs IV.C.3.i.1. through 2 of this section may be generally credited only if:
 - (1) The shutdown or curtailment occurred on or after the date the new source permit application is filed; or
 - (2) The applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the emissions reductions achieved by the shutdown or curtailment met the requirements of paragraphs IV.C.3.i.1. through 2 of this section.

4. *Credit for VOC substitution.* As set forth in the Agency's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977), EPA has found that almost all non-methane VOCs are photochemically reactive and that low reactivity VOCs eventually form as much ozone as the highly reactive VOCs. Therefore, no emission offset credit may be allowed for replacing one VOC compound with another of lesser reactivity, except for those compounds listed in Table 1 of the above policy statement.
5. *"Banking" of emission offset credit.* For new sources obtaining permits by applying offsets after January 16, 1979, the reviewing authority may allow offsets that exceed the requirements of reasonable progress toward attainment (Condition 3) to be "banked" (*i.e.*, saved to provide offsets for a source seeking a permit in the future) for use under this Ruling. Likewise, the reviewing authority may allow the owner of an existing source that reduces its own emissions to bank any resulting reductions beyond those required by the SIP for use under this Ruling, even if none of the offsets are applied immediately to a new source permit. A reviewing authority may allow these banked offsets to be used under the preconstruction review program required by Part D, as long as these banked emissions are identified and accounted for in the SIP control strategy. A reviewing authority may not approve the construction of a source using banked offsets if the new source would interfere with the SIP control strategy or if such use would violate any other condition set forth for use of offsets. To preserve banked offsets, the reviewing authority should identify them in either a SIP revision or a permit, and establish rules as to how and when they may be used.
6. *Offset credit for meeting NSPS or NESHAPS.* Where a source is subject to an emission limitation established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS), (*i.e.*, requirements under sections 111 and 112, respectively, of the Act), and a different SIP limitation, the more stringent limitation shall be used as the baseline for determining credit for emission and air quality offsets. The difference in emissions between the SIP and the NSPS or NESHAPS, for such source may not be used as offset credit. However, if a source were not subject to an NSPS or NESHAPS, for example if its construction had commenced prior to the proposal of an NSPS or NESHAPS for that source category, offset credit can be permitted for tightening the SIP to the NSPS or NESHAPS level for such source.

D. *Location of offsetting emissions.* The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this Ruling for increased emissions of any air pollutant only by obtaining emissions reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the reviewing authority may allow the owner or operator of a source to obtain such emissions reductions in another nonattainment area if the conditions in IV.D.1 and 2 are met.

1. The other area has an equal or higher nonattainment classification than the area in which the source is located.
2. Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

E. *Reasonable further progress.* Permits to construct and operate may be issued if the reviewing authority determines that, by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under CAA section 172) reasonable further progress (as defined in CAA section 171).

F. *Source obligation.* At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue 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 this Ruling shall apply to the source or modification as though construction had not yet commenced on the source or modification.

G. Offset Ratios.

1. In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this Ruling, the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in paragraphs IV.G.2 through IV.G.4.
2. In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this Ruling for ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:
 - (i) In any marginal nonattainment area for ozone—at least 1.1:1;
 - (ii) In any moderate nonattainment area for ozone—at least 1.15:1;
 - (iii) In any serious nonattainment area for ozone—at least 1.2:1;
 - (iv) In any severe nonattainment area for ozone—at least 1.3:1 (except that the ratio may be at least 1.2:1 if the State also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and
 - (v) In any extreme nonattainment area for ozone—at least 1.5:1 (except that the ratio may be at least 1.2:1 if the State also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and
3. Notwithstanding the requirements of paragraph IV.G.2 of this Ruling for meeting the requirements of paragraph IV.A, Condition 3 of this Ruling, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to subpart 2, part D, title I of the Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act.
4. In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this Ruling for ozone nonattainment areas that are subject to subpart 1, part D, title I of the Act (but are not subject to subpart 2, part D, title I of the Act, including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.
5. *Interpollutant offsetting.* In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this Ruling, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interpollutant offsetting is permitted for a particular pollutant as specified in this paragraph IV.G.5.
 - (i) The offset requirements of paragraph IV.A, Condition 3 of this Ruling for emissions of the ozone precursors NO_x and VOC may be satisfied by offsetting reductions of emissions of either of those precursors, if all other requirements for such offsets are also satisfied.
 - (ii) The offset requirements of paragraph IV.A, Condition 3 of this Ruling for direct PM_{2.5} emissions or emissions of precursors of PM_{2.5} may be satisfied by offsetting reductions of direct PM_{2.5} emissions or emissions of any PM_{2.5} precursor identified under paragraph II.A.31 (iii) of this Ruling if such offsets comply with an interprecursor trading hierarchy and ratio approved by the Administrator.

H. *Additional provisions for emissions of nitrogen oxides in ozone transport regions and nonattainment areas.* The requirements of this Ruling applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas where the Administrator has granted a NO_x waiver applying the standards set forth under 182(f) and the waiver continues to apply.

I. Applicability procedures.

1. To determine whether a project constitutes a major modification, the reviewing authority shall apply the principles set out in paragraphs IV.I.1(i) through (v) of this Ruling.
 - (i) Except as otherwise provided in paragraph IV.I.2 of this Ruling, and consistent with the definition of

major modification contained in paragraph II.A.5 of this Ruling, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph II.A.23 of this Ruling), and a significant net emissions increase (as defined in paragraphs II.A.6 and 10 of this Ruling). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

- (ii) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs IV.I.1(iii) through (v) of this Ruling. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.*, the second step of the process) is contained in the definition in paragraph II.A.6 of this Ruling. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
 - (iii) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph II.A.24 of this Ruling) and the baseline actual emissions (as defined in paragraphs II.A.30(i) and (ii) of this Ruling, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this Ruling).
 - (iv) *Actual-to-potential test for projects that only involve construction of a new emissions unit(s).* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph II.A.3 of this Ruling) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph II.A.30(iii) of this Ruling) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this Ruling).
 - (v) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs IV.I.1(iii) through (iv) of this Ruling as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this Ruling).
2. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph IV.K of this Ruling.

J. *Provisions for projected actual emissions.* Except as otherwise provided in paragraph IV.J.6(ii) of this Ruling, the provisions of this paragraph IV.J apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph IV.J.6 of this Ruling, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs II.A.24(ii)(a) through (c) of this Ruling for calculating projected actual emissions.

1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:
 - (i) A description of the project;
 - (ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
 - (iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph II.A.24(ii)(c) of this Ruling and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph IV.J.1 of this Ruling to the reviewing authority. Nothing in this paragraph IV.J.2 shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.
 3. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph IV.J.1(ii) of this Ruling; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.
 4. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year, during which records must be generated under paragraph IV.J.3 of this Ruling setting out the unit's annual emissions during the year that preceded submission of the report.
 5. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority if the annual emissions, in tons per year, from the project identified in paragraph IV.J.1 of this Ruling, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph IV.J.1(iii) of this Ruling) by a significant amount (as defined in paragraph II.A.10 of this Ruling) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph IV.J.1(iii) of this Ruling. Such report shall be submitted to the reviewing authority within 60 days after the end of such year. The report shall contain the following:
 - (i) The name, address and telephone number of the major stationary source;
 - (ii) The annual emissions as calculated pursuant to paragraph IV.J.3 of this Ruling; and
 - (iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).
 6. A “reasonable possibility” under paragraph IV.J of this Ruling occurs when the owner or operator calculates the project to result in either:
 - (i) A projected actual emissions increase of at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph II.A.23 of this Ruling (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or
 - (ii) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph II.A.24(ii)(c), sums to at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph II.A.23 of this Ruling (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph IV.J.6(ii) of this Ruling, and not also within the meaning of paragraph IV.J.6(i) of this Ruling, then provisions IV.J.2 through IV.J.5 do not apply to the project.
 7. The owner or operator of the source shall make the information required to be documented and maintained pursuant to this paragraph IV.J of this Ruling available for review upon a request for inspection by the reviewing authority or the general public pursuant to the requirements contained in §70.4(b)(3)(viii) of this chapter.
- K. *Actuals PALs.* The provisions in paragraphs IV.K.1 through 15 of this Ruling govern actuals PALs.
1. *Applicability.*
 - (i) The reviewing authority may approve the use of an actuals PAL for any existing major stationary source (except as provided in paragraph IV.K.1(ii) of this Ruling) if the PAL meets the requirements in

paragraphs IV.K.1 through 15 of this Ruling. The term “PAL” shall mean “actuals PAL” throughout paragraph IV.K of this Ruling.

- (ii) The reviewing authority shall not allow an actuals PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.
 - (iii) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs IV.K.1 through 15 of this Ruling, and complies with the PAL permit:
 - (a) Is not a major modification for the PAL pollutant;
 - (b) Does not have to be approved through a nonattainment major NSR program; and
 - (c) Is not subject to the provisions in paragraph IV.F of this Ruling (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of a nonattainment major NSR program).
 - (iv) Except as provided under paragraph IV.K.1(iii)(c) of this Ruling, a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.
2. *Definitions.* For the purposes of this paragraph IV.K, the definitions in paragraphs IV.K.2(i) through (xi) of this Ruling apply. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph II.A of this Ruling or in the Act.
- (i) **Actuals PAL** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph II.A.30 of this Ruling) of all emissions units (as defined in paragraph II.A.7 of this Ruling) at the source, that emit or have the potential to emit the PAL pollutant.
 - (ii) **Allowable emissions** means “allowable emissions” as defined in paragraph II.A.11 of this Ruling, except as this definition is modified according to paragraphs IV.K.2(ii)(a) through (b) of this Ruling.
 - (a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.
 - (b) An emissions unit's potential to emit shall be determined using the definition in paragraph II.A.3 of this Ruling, except that the words “enforceable as a practical matter” should be added after “federally enforceable.”
 - (iii) **Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph II.A.10 of this Ruling or in the Act, whichever is lower.
 - (iv) **Major emissions unit** means:
 - (a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or
 - (b) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.
 - (v) **Plantwide applicability limitation (PAL)** means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs IV.K.1 through 15 of this Ruling.
 - (vi) **PAL effective date** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
 - (vii) **PAL effective period** means the period beginning with the PAL effective date and ending 10 years

later.

- (viii) **PAL major modification** means, notwithstanding paragraphs II.A.5 and 6 of this Ruling (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.
 - (ix) **PAL permit** means the permit issued under this Ruling, the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the plan, or the title V permit issued by the reviewing authority that establishes a PAL for a major stationary source.
 - (x) **PAL pollutant** means the pollutant for which a PAL is established at a major stationary source.
 - (xi) **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph II.A.10 of this Ruling or in the Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph IV.K.2(iv) of this Ruling.
3. **Permit application requirements.** As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the reviewing authority for approval:
- (i) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations or work practices apply to each unit.
 - (ii) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.
 - (iii) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph IV.K.13(i) of this Ruling.
4. **General requirements for establishing PALs.**
- (i) The reviewing authority is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs IV.K.4(i) (a) through (g) of this Ruling are met.
 - (a) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.
 - (b) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph IV.K.5 of this Ruling.
 - (c) The PAL permit shall contain all the requirements of paragraph IV.K.7 of this Ruling.
 - (d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.
 - (e) Each PAL shall regulate emissions of only one pollutant.
 - (f) Each PAL shall have a PAL effective period of 10 years.
 - (g) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs IV.K. 12 through 14 of this Ruling for each emissions unit under the PAL through the PAL effective period.
 - (ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant,

which occur during the PAL effective period, creditable as decreases for purposes of offsets under paragraph IV.C of this Ruling unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

5. *Public participation requirement for PALs.* PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with ((51.160 and 51.161 of this chapter. This includes the requirement that the reviewing authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The reviewing authority must address all material comments before taking final action on the permit.
6. *Setting the 10-year actuals PAL level.* The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph II.A.30 of this Ruling) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph II.A.10 of this Ruling or under the Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the units. The reviewing authority shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).
7. *Contents of the PAL permit.* The PAL permit contain, at a minimum, the information in paragraphs IV.K.7 (i) through (x) of this Ruling.
 - (i) The PAL pollutant and the applicable source-wide emission limitation in tons per year.
 - (ii) The PAL permit effective date and the expiration date of the PAL (PAL effective period).
 - (iii) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph IV.K.10 of this Ruling before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the reviewing authority.
 - (iv) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.
 - (v) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph IV.K.9 of this Ruling.
 - (vi) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph IV.K.13(i) of this Ruling.
 - (vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph IV.K.12 of this Ruling.
 - (viii) A requirement to retain the records required under paragraph IV.K.13 of this Ruling on site. Such records may be retained in an electronic format.
 - (ix) A requirement to submit the reports required under paragraph IV.K.14 of this Ruling by the required deadlines.
 - (x) Any other requirements that the reviewing authority deems necessary to implement and enforce the PAL.

8. *PAL effective period and reopening of the PAL permit.* The requirements in paragraphs IV.K.8(i) and (ii) of this Ruling apply to actuals PALs.
- (i) *PAL effective period.* The reviewing authority shall specify a PAL effective period of 10 years.
 - (ii) Reopening of the PAL permit.
 - (a) During the PAL effective period, the reviewing authority must reopen the PAL permit to:
 - (1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.
 - (2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under paragraph IV.C of this Ruling.
 - (3) Revise the PAL to reflect an increase in the PAL as provided under paragraph IV.K.11 of this Ruling.
 - (b) The reviewing authority shall have discretion to reopen the PAL permit for the following:
 - (1) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date.
 - (2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the plan.
 - (3) Reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.
 - (c) Except for the permit reopening in paragraph IV.K.8(ii)(a)(1) of this Ruling for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph IV.K.5 of this Ruling.
9. *Expiration of a PAL.* Any PAL which is not renewed in accordance with the procedures in paragraph IV.K.10 of this Ruling shall expire at the end of the PAL effective period, and the requirements in paragraphs IV.K.9(i) through (v) of this Ruling shall apply.
- (i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs IV.K.9(i)(a) through (b) of this Ruling.
 - (a) Within the time frame specified for PAL renewals in paragraph IV.K.10(ii) of this Ruling, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the reviewing authority) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph IV.K.10(v) of this Ruling, such distribution shall be made as if the PAL had been adjusted.
 - (b) The reviewing authority shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the reviewing authority determines is appropriate.
 - (ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The reviewing authority may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.
 - (iii) Until the reviewing authority issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph IV.K.9(i)(a) of this Ruling, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

- (iv) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification in paragraph II.A.5 of this Ruling.
- (v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph IV.F of this Ruling, but were eliminated by the PAL in accordance with the provisions in paragraph IV.K.1(iii)(c) of this Ruling.

10. Renewal of a PAL.

- (i) The reviewing authority shall follow the procedures specified in paragraph IV.K.5 of this Ruling in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the reviewing authority.
- (ii) *Application deadline.* The major stationary source owner or operator shall submit a timely application to the reviewing authority to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.
- (iii) *Application requirements.* The application to renew a PAL permit shall contain the information required in paragraphs IV.K.10(iii)(a) through (d) of this Ruling.
 - (a) The information required in paragraphs IV.K.3(i) through (iii) of this Ruling.
 - (b) A proposed PAL level.
 - (c) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).
 - (d) Any other information the owner or operator wishes the reviewing authority to consider in determining the appropriate level for renewing the PAL.
- (iv) *PAL adjustment.* In determining whether and how to adjust the PAL, the reviewing authority shall consider the options outlined in paragraphs IV.K.10(iv)(a) and (b) of this Ruling. However, in no case may any such adjustment fail to comply with paragraph IV.K.10(iv)(c) of this Ruling.
 - (a) If the emissions level calculated in accordance with paragraph IV.K.6 of this Ruling is equal to or greater than 80 percent of the PAL level, the reviewing authority may renew the PAL at the same level without considering the factors set forth in paragraph IV.K.10(iv)(b) of this Ruling; or
 - (b) The reviewing authority may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the reviewing authority in its written rationale.
- (c) Notwithstanding paragraphs IV.K.10(iv)(a) and (b) of this Ruling,
 - (1) If the potential to emit of the major stationary source is less than the PAL, the reviewing authority shall adjust the PAL to a level no greater than the potential to emit of the source; and
 - (2) The reviewing authority shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph IV.K.11 of this Ruling (increasing a PAL).
- (v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during

the PAL effective period, and if the reviewing authority has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

11. Increasing a PAL during the PAL effective period.

- (i) The reviewing authority may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs IV.K.11(i)(a) through (d) of this Ruling.
 - (a) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.
 - (b) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.
 - (c) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph IV.K.11(i)(a) of this Ruling, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.
 - (d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
- (ii) The reviewing authority shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph IV.K.11(i)(b)), plus the sum of the baseline actual emissions of the small emissions units.
- (iii) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph IV.K.5 of this Ruling.

12. Monitoring requirements for PALs.

- (i) General Requirements.
 - (a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.
 - (b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs IV.K.12(ii)(a) through (d) of this Ruling and must be approved by the reviewing authority.
 - (c) Notwithstanding paragraph IV.K.12(i)(b) of this Ruling, you may also employ an alternative monitoring approach that meets paragraph IV.K.12(i)(a) of this Ruling if approved by the reviewing authority.

- (d) Failure to use a monitoring system that meets the requirements of this Ruling renders the PAL invalid.
- (ii) Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs IV.K.12(iii) through (ix) of this Ruling:
 - (a) Mass balance calculations for activities using coatings or solvents;
 - (b) CEMS;
 - (c) CPMS or PEMS; and
 - (d) Emission Factors.
- (iii) Mass Balance Calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:
 - (a) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
 - (b) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
 - (c) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the reviewing authority determines there is site-specific data or a site-specific monitoring program to support another content within the range.
- (iv) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
 - (a) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and
 - (b) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.
- (v) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
 - (a) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and
 - (b) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the reviewing authority, while the emissions unit is operating.
- (vi) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
 - (a) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
 - (b) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
 - (c) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the reviewing authority determines that testing is not required.
- (vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

- (viii) Notwithstanding the requirements in paragraphs IV.K.12(iii) through (vii) of this Ruling, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the reviewing authority shall, at the time of permit issuance:
- (a) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or
 - (b) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.
- (ix) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the reviewing authority. Such testing must occur at least once every 5 years after issuance of the PAL.
13. Recordkeeping requirements.
- (i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph IV.K of this Ruling and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.
 - (ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:
 - (a) A copy of the PAL permit application and any applications for revisions to the PAL; and
 - (b) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.
14. *Reporting and notification requirements.* The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the reviewing authority in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs IV.K.14(i) through (iii).
- (i) Semi-Annual Report. The semi-annual report shall be submitted to the reviewing authority within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs IV.K.14(i)(a) through (g) of this Ruling.
 - (a) The identification of owner and operator and the permit number.
 - (b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph IV.K.13(i) of this Ruling.
 - (c) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.
 - (d) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.
 - (e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.
 - (f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by paragraph IV.K.12(vii) of this Ruling.
 - (g) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.
 - (ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to §70.6(a)(3)(iii)(B) of this chapter shall satisfy this reporting

requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing §70.6(a)(3)(iii)(B) of this chapter. The reports shall contain the following information:

- (a) The identification of owner and operator and the permit number;
 - (b) The PAL requirement that experienced the deviation or that was exceeded;
 - (c) Emissions resulting from the deviation or the exceedance; and
 - (d) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.
- (iii) Re-validation results. The owner or operator shall submit to the reviewing authority the results of any re-validation test or method within 3 months after completion of such test or method.

15. Transition requirements.

- (i) No reviewing authority may issue a PAL that does not comply with the requirements in paragraphs IV.K.1 through 15 of this Ruling after the date that this Ruling becomes effective for the State in which the major stationary source is located.
- (ii) The reviewing authority may supersede any PAL which was established prior to the date that this Ruling becomes effective for the State in which the major stationary source is located with a PAL that complies with the requirements of paragraphs IV.K.1 through 15 of this Ruling.

L. *Severability*. If any provision of this Ruling, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Ruling, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

V. Administrative Procedures

The necessary emission offsets may be proposed either by the owner of the proposed source or by the local community or the State. The emission reduction committed to must be enforceable by authorized State and/or local agencies and under the Clean Air Act, and must be accomplished by the new source's start-up date. If emission reductions are to be obtained in a State that neighbors the State in which the new source is to be located, the emission reductions committed to must be enforceable by the neighboring State and/or local agencies and under the Clean Air Act. Where the new facility is a replacement for a facility that is being shut down in order to provide the necessary offsets, the reviewing authority may allow up to 180 days for shakedown of the new facility before the existing facility is required to cease operation.

A. *Source initiated emission offsets*. A source may propose emission offsets which involve:

- (1) Reductions from sources controlled by the source owner (internal emission offsets); and/or
- (2) reductions from neighboring sources (external emission offsets). The source does not have to investigate all possible emission offsets. As long as the emission offsets obtained represent reasonable progress toward attainment, they will be acceptable. It is the reviewing authority's responsibility to assure that the emission offsets will be as effective as proposed by the source. An internal emission offset will be considered enforceable if it is made a SIP requirement by inclusion as a condition of the new source permit and the permit is forwarded to the appropriate EPA Regional Office.⁷ An external emission offset will not be enforceable unless the affected source(s) providing the emission reductions

⁷ The emission offset will, therefore, be enforceable by EPA under section 113 as an applicable SIP requirement and will be enforceable by private parties under section 304 as an emission limitation.

is subject to a new SIP requirement to ensure that its emissions will be reduced by a specified amount in a specified time. Thus, if the source(s) providing the emission reductions does not obtain the necessary reduction, it will be in violation of a SIP requirement and subject to enforcement action by EPA, the State and/or private parties.

The form of the SIP revision may be a State or local regulation, operating permit condition, consent or enforcement order, or any other mechanism available to the State that is enforceable under the Clean Air Act. If a SIP revision is required, the public hearing on the revision may be substituted for the normal public comment procedure required for all major sources under 40 CFR 51.18. The formal publication of the SIP revision approval in the Federal Register need not appear before the source may proceed with construction. To minimize uncertainty that may be caused by these procedures, EPA will, if requested by the State, propose a SIP revision for public comment in the Federal Register concurrently with the State public hearing process. Of course, any major change in the final permit/SIP revision submitted by the State may require a reproposal by EPA.

B. *State or community initiated emission offsets.* A State or community which desires that a source locate in its area may commit to reducing emissions from existing sources (including mobile sources) to sufficiently outweigh the impact of the new source and thus open the way for the new source. As with source-initiated emission offsets, the commitment must be something more than one-for-one. This commitment must be submitted as a SIP revision by the State.

VI. Policy Where Attainment Dates have not Passed

In some cases, the dates for attainment of primary standards specified in the SIP under section 110 have not yet passed due to a delay in the promulgation of a plan under this section of the Act. In addition the Act provides more flexibility with respect to the dates for attainment of secondary NAAQS than for primary standards. Rather than setting specific deadlines, section 110 requires secondary NAAQS to be achieved within a “reasonable time”. Therefore, in some cases, the date for attainment of secondary standards specified in the SIP under section 110 may also not yet have passed. In such cases, a new source locating in an area designated in 40 CFR 81.300 *et seq.* as nonattainment (or, where section III of this Ruling is applicable, a new source that would cause or contribute to a NAAQS violation) may be exempt from the Conditions of section IV.A if the conditions in paragraphs VI.A through C are met.

- A. The new source meets the applicable SIP emission limitations.
- B. The new source will not interfere with the attainment date specified in the SIP under section 110 of the Act.
- C. The Administrator has determined that conditions A and B of this section are satisfied and such determination is published in the Federal Register.

VII. Anti-Backsliding Measures for Revoked Ozone NAAQS

Nonattainment area new source review obligations for prior ozone NAAQS.

A. Except as provided in paragraph VII.B of this Ruling, an area designated nonattainment for the 2008 ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015 remains subject to the obligation to adopt and implement the major source threshold and offset ratio requirements for nonattainment NSR that apply or applied to the area pursuant to sections 172(c)(5), 173 and 182 of the Act based on the highest of: (i) The area's classification under section 181(a)(1) of the Act for the 1-hour ozone NAAQS as of the effective date of revocation of that NAAQS; (ii) the area's classification under §51.903 for the 1997 ozone NAAQS as of the date a permit is issued or as of April 6, 2015, whichever is earlier; and (iii) the area's classification under §51.1103 for the 2008 ozone NAAQS.

- B. 1. An area remains subject to the obligations for a revoked NAAQS under paragraph (a) until either (i) the area is redesignated to attainment for the 2008 ozone NAAQS; or (ii) the EPA approves a demonstration for the area in a redesignation substitute procedure for a revoked NAAQS per the provisions of §51.1105(b). Under this redesignation substitute procedure for a revoked NAAQS, and for this limited anti-backsliding purpose, the demonstration must show that the area has attained that revoked NAAQS due to permanent and enforceable emission reductions and that the area will maintain that revoked NAAQS for 10 years from the date of EPA's approval of this showing.
2. Effect of redesignation to attainment for 2008 ozone NAAQS or approval of a redesignation substitute for a revoked ozone NAAQS. After redesignation to attainment for the 2008 ozone NAAQS, the state may request that provisions for nonattainment NSR be removed from the SIP. After EPA approval of a redesignation substitute for a revoked NAAQS under the provisions of §51.1105(b), the state may request that provisions for nonattainment NSR for that revoked NAAQS be removed from the SIP. Upon removal of nonattainment NSR provisions for a revoked NAAQS, the state remains subject to the obligation to adopt and implement the major source threshold and offset ratio requirements for nonattainment NSR that apply or applied to the area for the remaining applicable NAAQS consistent with paragraph VII.A of this Ruling.

Editorial Note: For Federal Register citations affecting appendix S to part 51, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

Effective Date Note: At 76 FR 17554, Mar. 30, 2011, part 51, appendix S, paragraph II.A.5 (vii) is stayed indefinitely.

Appendix IV

40 CFR Part 52.21

Disclaimer

This is not an official legal edition of the CFR. What follows had been extracted from the Electronic Code of Federal Regulations (e-CFR) on February 5, 2018 and formatted to facilitate reference. The e-CFR is an editorial compilation of CFR material and Federal Register amendments produced by the National Archives and Records Administration's Office of the Federal Register (OFR) and the Government Publishing Office. The OFR updates the material in the e-CFR on a daily basis.

Current eCFR Version of §52.21

§52.21 Prevention of significant deterioration of air quality.

(a) (1) *Plan disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any State where the existing air quality is better than the national ambient air quality standards. Specific disapprovals are listed where applicable, in subparts B through DDD and FFF of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in subparts B through DDD and FFF of this part. Where this section is so incorporated, the provisions shall also be applicable to all lands owned by the Federal Government and Indian Reservations located in such State. No disapproval with respect to a State's failure to prevent significant deterioration of air quality shall invalidate or otherwise affect the obligations of States, emission sources, or other persons with respect to all portions of plans approved or promulgated under this part.

(2) Applicability procedures.

- (i) The requirements of this section apply to the construction of any new major stationary source (as defined in paragraph (b)(1) of this section) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.
- (ii) The requirements of paragraphs (j) through (r) of this section apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.
- (iii) No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Administrator has authority to issue any such permit.
- (iv) The requirements of the program will be applied in accordance with the principles set out in paragraphs (a)(2)(iv)(a) through (f) of this section.

(a) Except as otherwise provided in paragraphs (a)(2)(v) and (vi) of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (b)(40) of this section), and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(b) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (a)(2)(iv)(c) through (f) of this section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in paragraph (b)(3) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(c) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (b)(41) of this section) and the baseline actual emissions (as defined in paragraphs (b)(48)(i) and (ii) of this section), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(d) *Actual-to-potential test for projects that only involve construction of a new emissions unit(s).* A significant

emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (b)(4) of this section) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (b)(48)(iii) of this section) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(e) [Reserved]

(f) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(iv)(c) through (d) of this section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(v) For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under paragraph (aa) of this section.

(b) *Definitions.* For the purposes of this section:

(1) (i) Major stationary source means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: 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 (with thermal dryers), 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 (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), 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;

(b) Notwithstanding the stationary source size specified in paragraph (b)(1)(i) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) of this section, as a major stationary source, if the changes would constitute a major stationary source by itself.

(ii) A major source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

- (i) Hydrofluoric, sulfuric, or nitric acid plants;
 - (j) Petroleum refineries;
 - (k) Lime plants;
 - (l) Phosphate rock processing plants;
 - (m) Coke oven batteries;
 - (n) Sulfur recovery plants;
 - (o) Carbon black plants (furnace process);
 - (p) Primary lead smelters;
 - (q) Fuel conversion plants;
 - (r) Sintering plants;
 - (s) Secondary metal production plants;
 - (t) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
 - (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 - (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (w) Taconite ore processing plants;
 - (x) Glass fiber processing plants;
 - (y) Charcoal production plants;
 - (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, and
 - (aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.
- (2) (i) **Major modification** means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant (as defined in paragraph (b)(50) of this section); and a significant net emissions increase of that pollutant from the major stationary source.
- (ii) Any significant emissions increase (as defined at paragraph (b)(40) of this section) from any emissions units or net emissions increase (as defined in paragraph (b)(3) of this section) at a major stationary source that is significant for volatile organic compounds or NO_x shall be considered significant for ozone.
- (iii) A physical change or change in the method of operation shall not include:
- (a) Routine maintenance, repair and replacement. Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc) of this section;
- NOTE TO PARAGRAPH (b)(2)(iii)(a): By court order on December 24, 2003, the second sentence of this paragraph (b)(2)(iii)(a) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.*
- (b) 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 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the Federal Power Act;
 - (c) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;
 - (d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

- (e) Use of an alternative fuel or raw material by a stationary source which:
 - (1) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166; or
 - (2) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;
- (f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166.
- (g) Any change in ownership at a stationary source.
- (h) [Reserved]
- (i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:
 - (1) The State implementation plan for the State in which the project is located, and
 - (2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.
- (j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.
- (k) The reactivation of a very clean coal-fired electric utility steam generating unit.
- (iv) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (aa) of this section for a PAL for that pollutant. Instead, the definition at paragraph (aa)(2)(viii) of this section shall apply.
- (v) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in paragraph (b)(1)(iii) of this section.

EFFECTIVE DATE NOTE: At 76 FR 17556, Mar. 30, 2011, §52.21(b)(2)(v) and (b)(3)(iii)(c) were stayed indefinitely.

- (3) (i) **Net emissions increase** means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:
 - (a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph (a)(2)(iv) of this section; and
 - (b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (b)(3)(i)(b) shall be determined as provided in paragraph (b)(48) of this section, except that paragraphs (b)(48)(i)(c) and (b)(48)(ii)(d) of this section shall not apply.
- (ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
 - (a) The date five years before construction on the particular change commences; and
 - (b) The date that the increase from the particular change occurs.
- (iii) An increase or decrease in actual emissions is creditable only if:

- (a) The Administrator or other reviewing authority has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and
- (b) The increase or decrease in emissions did not occur at a Clean Unit except as provided in paragraphs (x)(8) and (y)(10) of this section.
- (c) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in paragraph (b)(1)(iii) of this section or it occurs at an emission unit that is located at a major stationary source that belongs to one of the listed source categories. (iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

EFFECTIVE DATE NOTE: At 76 FR 17556, Mar. 30, 2011, §52.21(b)(2)(v) and (b)(3)(iii)(c) were stayed indefinitely.

- (v) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
 - (vi) A decrease in actual emissions is creditable only to the extent that:
 - (a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
 - (b) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.
 - (c) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and
 - (vii) [Reserved]
 - (viii) 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.
 - (ix) Paragraph (b)(21)(ii) of this section shall not apply for determining creditable increases and decreases.
- (4) **Potential to emit** means 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 federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.
- (5) **Stationary source** means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.
- (6) (i) **Building, structure, facility, or installation** means 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) except the activities of any vessel. 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).
- (ii) Notwithstanding the provisions of paragraph (b)(6)(i) of this section, building, structure, facility, or installation means, for onshore activities under Standard Industrial Classification (SIC) Major Group

13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that 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 adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph (b)(6)(ii), has the same meaning as in 40 CFR 63.761.

- (7) **Emissions unit** means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph (b)(31) of this section. For purposes of this section, there are two types of emissions units as described in paragraphs (b)(7)(i) and (ii) of this section.
- (i) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.
- (ii) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (b)(7)(i) of this section. A replacement unit, as defined in paragraph (b)(33) of this section, is an existing emissions unit.
- (8) **Construction** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.
- (9) **Commence** as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:
- (i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- (ii) 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.
- (10) **Necessary preconstruction approvals or permits** means those permits or approvals required under Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.
- (11) **Begin actual construction** means, 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.
- (12) **Best available control technology** means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under Act which would be emitted from any proposed major stationary source or major modification which the Administrator, 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 best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the Administrator 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 best available control technology. 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.

- (13) (i) **Baseline concentration** means that ambient concentration level that exists in the baseline area 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:
- (a) The actual emissions, as defined in paragraph (b)(21) of this section, representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b)(13)(ii) of this section; and
 - (b) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.
- (ii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):
- (a) Actual emissions, as defined in paragraph (b)(21) of this section, from any major stationary source on which construction commenced after the major source baseline date; and
 - (b) Actual emissions increases and decreases, as defined in paragraph (b)(21) of this section, at any stationary source occurring after the minor source baseline date.
- (14) (i) Major source baseline date means:
- (a) In the case of PM₁₀ and sulfur dioxide, January 6, 1975;
 - (b) In the case of nitrogen dioxide, February 8, 1988; and
 - (c) In the case of PM_{2.5}, October 20, 2010.
- (ii) “Minor source baseline date” means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:
- (a) In the case of PM₁₀ and sulfur dioxide, August 7, 1977;
 - (b) In the case of nitrogen dioxide, February 8, 1988; and
 - (c) In the case of PM_{2.5}, October 20, 2011.
- (iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:
- (a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and
 - (b) 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.
- (iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that the Administrator shall rescind a minor source baseline date where it can be shown, to the satisfaction of the Administrator, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM-10 emissions.
- (15) (i) **Baseline area** means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than 1 µg/m³ (annual average) for SO₂, NO₂, or PM₁₀; or equal to or greater than 0.3 µg/m³ (annual average) for PM_{2.5}.
- (ii) Area redesignations under section 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

- (a) Establishes a minor source baseline date; or
 - (b) Is subject to 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.
 - (iii) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that such baseline area shall not remain in effect if the Administrator rescinds the corresponding minor source baseline date in accordance with paragraph (b)(14)(iv) of this section.
- (16) **Allowable emissions** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:
- (i) The applicable standards as set forth in 40 CFR parts 60 and 61;
 - (ii) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or
 - (iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.
- (17) **Federally enforceable** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.
- (18) **Secondary emissions** means 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. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.
- (i) Emissions from ships or trains coming to or from the new or modified stationary source; and
 - (ii) 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.
- (19) **Innovative control technology** means 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 nonair quality environmental impacts.
- (20) **Fugitive emissions** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (21) (i) **Actual emissions** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(21)(ii) through (iv) of this section, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (aa) of this section. Instead, paragraphs (b)(41) and (b)(48) of this section shall apply for those purposes.
- (ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Administrator 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.

- (iii) The Administrator may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
 - (iv) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.
- (22) *Complete* means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.
- (23) (i) **Significant** means, 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

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy of particulate matter emissions

PM₁₀: 15 tpy

PM_{2.5}: 10 tpy of direct PM_{2.5} emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under paragraph (b)(50) of this section

Ozone: 40 tpy of volatile organic compounds or nitrogen oxides

Lead: 0.6 tpy

Fluorides: 3 tpy

Sulfuric acid mist: 7 tpy

Hydrogen sulfide (H₂S): 10 tpy

Total reduced sulfur (including H₂S): 10 tpy

Reduced sulfur compounds (including H₂S): 10 tpy

Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10⁻⁶ megagrams per year (3.5×10⁻⁶ tons per year)

Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)

Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)

Municipal solid waste landfills emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

- (ii) *Significant* means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that paragraph (b)(23)(i) of this section, does not list, any emissions rate.
 - (iii) Notwithstanding paragraph (b)(23)(i) of this section, *significant* means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m³, (24-hour average).
- (24) **Federal Land Manager** means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.
- (25) **High terrain** means any area having an elevation 900 feet or more above the base of the stack of a source.
- (26) **Low terrain** means any area other than high terrain.
- (27) **Indian Reservation** means any federally recognized reservation established by Treaty, Agreement,

executive order, or act of Congress.

- (28) **Indian Governing Body** means 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.
- (29) **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 impairment, 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.
- (30) **Volatile organic compounds (VOC)** is as defined in §51.100(s) of this chapter.
- (31) **Electric utility steam generating unit** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.
- (32) [Reserved]
- (33) **Replacement unit** means an emissions unit for which all the criteria listed in paragraphs (b)(33)(i) through (iv) of this section are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.
- (i) The emissions unit is a reconstructed unit within the meaning of §60.15(b)(1) of this chapter, or the emissions unit completely takes the place of an existing emissions unit.
- (ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
- (iii) The replacement does not alter the basic design parameters (as discussed in paragraph (cc)(2) of this section) of the process unit.
- (iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.
- (34) **Clean coal technology** means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.
- (35) **Clean coal technology demonstration project** means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.
- (36) **Temporary clean coal technology demonstration project** means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.
- (37) (i) **Repowering** means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more

of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

- (ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.
 - (iii) The Administrator shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.
- (38) **Reactivation of a very clean coal-fired electric utility steam generating unit** means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:
- (i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;
 - (ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;
 - (iii) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and
 - (iv) Is otherwise in compliance with the requirements of the Clean Air Act.
- (39) **Pollution prevention** means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.
- (40) **Significant emissions increase** means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (b)(23) of this section) for that pollutant.
- (41) (i) **Projected actual emissions** means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.
- (ii) In determining the projected actual emissions under paragraph (b)(41)(i) of this section (before beginning actual construction), the owner or operator of the major stationary source:
 - (a) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and
 - (b) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and
 - (c) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph (b)(48) of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or
 - (d) In lieu of using the method set out in paragraphs (a)(41)(ii)(a) through (c) of this section, may elect

to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (b)(4) of this section.

- (42) [Reserved]
- (43) **Prevention of Significant Deterioration (PSD) program** means the EPA-implemented major source preconstruction permit programs under this section or a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan pursuant to §51.166 of this chapter to implement the requirements of that section. Any permit issued under such a program is a major NSR permit.
- (44) **Continuous emissions monitoring system (CEMS)** means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.
- (45) **Predictive emissions monitoring system (PEMS)** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.
- (46) **Continuous parameter monitoring system (CPMS)** means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.
- (47) **Continuous emissions rate monitoring system (CERMS)** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).
- (48) **Baseline actual emissions** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (b)(48)(i) through (iv) of this section.
- (i) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation.
- (a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
- (b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.
- (c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used For each regulated NSR pollutant.
- (d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (b)(48)(i)(b) of this section.
- (ii) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Administrator for a permit required under this section or by the reviewing authority for a permit required by a plan, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

- (a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
- (b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.
- (c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of this chapter, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of §51.165(a)(3)(ii)(G) of this chapter.
- (d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used For each regulated NSR pollutant.
- (e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (b)(48)(ii)(b) and (e) of this section.
- (iii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.
- (iv) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (b)(48)(i) of this section, for other existing emissions units in accordance with the procedures contained in paragraph (b)(48)(ii) of this section, and for a new emissions unit in accordance with the procedures contained in paragraph (b)(48)(iii) of this section.
- (49) **Subject to regulation** means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:
 - (i) *Greenhouse gases (GHGs)*, the air pollutant defined in §86.1818-12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (b)(49)(iv) through (v) of this section and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit containing the GHG PAL.
 - (ii) For purposes of paragraphs (b)(49)(iii) through (v) of this section, the term tpy *CO₂ equivalent emissions (CO₂e)* shall represent an amount of GHGs emitted, and shall be computed as follows:
 - (a) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of part 98 of this chapter—Global Warming Potentials. For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the

decomposition of non-fossilized and biodegradable organic material).

(b) Sum the resultant value from paragraph (b)(49)(ii)(a) of this section for each gas to compute a tpy CO₂e.

- (iii) The term *emissions increase* as used in paragraphs (b)(49)(iv) through (v) of this section shall mean that both a significant emissions increase (as calculated using the procedures in paragraph (a)(2)(iv) of this section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and “significant” is defined as 75,000 tpy CO₂e instead of applying the value in paragraph (b)(23)(ii) of this section.
- (iv) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:
- (a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or
- (b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more; and,

(50) ***Regulated NSR pollutant***, for purposes of this section, means the following:

- (i) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not limited to, the following:
- (a) PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in PSD permits. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.
- (b) Any pollutant identified under this paragraph (b)(50)(i)(b) as a constituent or precursor for a pollutant for which a national ambient air quality standard has been promulgated. Precursors identified by the Administrator for purposes of NSR are the following:
- (1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.
 - (2) Sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas.
 - (3) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.
 - (4) Volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.
- (ii) Any pollutant that is subject to any standard promulgated under section 111 of the Act;
- (iii) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act;
- (iv) Any pollutant that otherwise is subject to regulation under the Act as defined in paragraph (b)(49) of this section.
- (v) Notwithstanding paragraphs (b)(50)(i) through (iv) of this section, the term *regulated NSR pollutant* shall

not include any or all hazardous air pollutants either listed in section 112 of the Act, or added to the list pursuant to section 112(b)(2) of the Act, and which have not been delisted pursuant to section 112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.

- (51) **Reviewing authority** means the State air pollution control agency, local agency, other State agency, Indian tribe, or other agency authorized by the Administrator to carry out a permit program under §51.165 and §51.166 of this chapter, or the Administrator in the case of EPA-implemented permit programs under this section.
- (52) **Project** means a physical change in, or change in the method of operation of, an existing major stationary source.
- (53) **Lowest achievable emission rate (LAER)** is as defined in §51.165(a)(1)(xiii) of this chapter.
- (54) **Reasonably available control technology (RACT)** is as defined in §51.100(o) of this chapter.
- (55) (i) In general, *process unit* means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or a completed product. A single stationary source may contain more than one process unit, and a process unit may contain more than one emissions unit.
- (ii) Pollution control equipment is not part of the process unit, unless it serves a dual function as both process and control equipment. Administrative and warehousing facilities are not part of the process unit.
- (iii) For replacement cost purposes, components shared between two or more process units are proportionately allocated based on capacity.
- (iv) The following list identifies the process units at specific categories of stationary sources.
- (a) For a steam electric generating facility, the process unit consists of those portions of the plant that contribute directly to the production of electricity. For example, at a pulverized coal-fired facility, the process unit would generally be the combination of those systems from the coal receiving equipment through the emission stack (excluding post-combustion pollution controls), including the coal handling equipment, pulverizers or coal crushers, feedwater heaters, ash handling, boiler, burners, turbine-generator set, condenser, cooling tower, water treatment system, air preheaters, and operating control systems. Each separate generating unit is a separate process unit.
- (b) For a petroleum refinery, there are several categories of process units: those that separate and/or distill petroleum feedstocks; those that change molecular structures; petroleum treating processes; auxiliary facilities, such as steam generators and hydrogen production units; and those that load, unload, blend or store intermediate or completed products.
- (c) For an incinerator, the process unit would consist of components from the feed pit or refuse pit to the stack, including conveyors, combustion devices, heat exchangers and steam generators, quench tanks, and fans.

NOTE TO PARAGRAPH (b)(55): By a court order on December 24, 2003, this paragraph (b)(55) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.

- (56) **Functionally equivalent component** means a component that serves the same purpose as the replaced component.

NOTE TO PARAGRAPH (b)(56): By a court order on December 24, 2003, this paragraph (b)(56) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.

- (57) **Fixed capital cost** means the capital needed to provide all the depreciable components. “Depreciable

components” refers to all components of fixed capital cost and is calculated by subtracting land and working capital from the total capital investment, as defined in paragraph (b)(58) of this section.

NOTE TO PARAGRAPH (b)(57): By a court order on December 24, 2003, this paragraph (b)(57) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.

(58) **Total capital investment** means the sum of the following: all costs required to purchase needed process equipment (purchased equipment costs); the costs of labor and materials for installing that equipment (direct installation costs); the costs of site preparation and buildings; other costs such as engineering, construction and field expenses, fees to contractors, startup and performance tests, and contingencies (indirect installation costs); land for the process equipment; and working capital for the process equipment.

NOTE TO PARAGRAPH (b)(58): By a court order on December 24, 2003, this paragraph (b)(58) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.

(c) *Ambient air increments.* In areas designated as Class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I Area	
PM_{2.5}:	
Annual arithmetic mean	1
24-hr maximum	2
PM₁₀:	
Annual arithmetic mean	4
24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II Area	
PM_{2.5}:	
Annual arithmetic mean	4
24-hr maximum	9
PM₁₀:	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20

24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III Area	
PM _{2.5} :	
Annual arithmetic mean	8
24-hr maximum	18
PM ₁₀ :	
Annual arithmetic mean	34
24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr 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.

- (d) *Ambient air ceilings.* No concentration of a pollutant shall exceed:
- (1) The concentration permitted under the national secondary ambient air quality standard, or
 - (2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.
- (e) Restrictions on area classifications.
- (1) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:
 - (i) International parks,
 - (ii) National wilderness areas which exceed 5,000 acres in size,
 - (iii) National memorial parks which exceed 5,000 acres in size, and
 - (iv) National parks which exceed 6,000 acres in size.
 - (2) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this section.
 - (3) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this section.
 - (4) The following areas may be redesignated only as Class I or II:
 - (i) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and
 - (ii) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000

acres in size.

(f) [Reserved]

(g) Redesignation.

- (1) All areas (except as otherwise provided under paragraph (e) of this section) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by paragraph (e) of this section) may be proposed by the respective States or Indian Governing Bodies, as provided below, subject to approval by the Administrator as a revision to the applicable State implementation plan.
- (2) The State may submit to the Administrator a proposal to redesignate areas of the State Class I or Class II provided that:
 - (i) At least one public hearing has been held in accordance with procedures established in §51.102 of this chapter;
 - (ii) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;
 - (iii) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;
 - (iv) Prior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the State has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of 60 days) to confer with the State respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the State shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and
 - (v) The State has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.
- (3) Any area other than an area to which paragraph (e) of this section refers may be redesignated as Class III if—
 - (i) The redesignation would meet the requirements of paragraph (g)(2) of this section;
 - (ii) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of the State, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless State law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation;
 - (iii) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and
 - (iv) Any permit application for any major stationary source or major modification, subject to review under paragraph (l) of this section, which could receive a permit under this section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.
- (4) Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate

Indian Governing Body. The appropriate Indian Governing Body may submit to the Administrator a proposal to redesignate areas Class I, Class II, or Class III: *Provided, That:*

- (i) The Indian Governing Body has followed procedures equivalent to those required of a State under paragraphs (g)(2), (g)(3)(iii), and (g)(3)(iv) of this section; and
 - (ii) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located and which border the Indian Reservation.
- (5) The Administrator shall disapprove, within 90 days of submission, a proposed redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this paragraph or is inconsistent with paragraph (e) of this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.
- (6) If the Administrator disapproves any proposed redesignation, the State or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator.
- (h) Stack heights.
- (1) The degree of emission limitation required for control of any air pollutant under this section shall not be affected in any manner by—
 - (i) So much of the stack height of any source as exceeds good engineering practice, or
 - (ii) Any other dispersion technique.
 - (2) Paragraph (h)(1) of this section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.
- (i) Exemptions.
- (1) The requirements of paragraphs (j) through (r) of this section shall not apply to a particular major stationary source or major modification, if;
 - (i) Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or
 - (ii) The source or modification was subject to the review requirements of 40 CFR 52.21(d)(1) as in effect before March 1, 1978, and the owner or operator:
 - (a) Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;
 - (b) Commenced construction before March 19, 1979; and
 - (c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or
 - (iii) The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such a case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or
 - (iv) The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:
 - (a) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before March 1, 1978;
 - (b) Commenced construction before March 19, 1979; and
 - (c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

- (v) The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:
 - (a) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;
 - (b) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and
 - (c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or
- (vi) The source 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 the state in which the source or modification would be located requests that it be exempt from those requirements; or
- (vii) 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:
 - (a) Coal cleaning plants (with thermal dryers);
 - (b) Kraft pulp mills;
 - (c) Portland cement plants;
 - (d) Primary zinc smelters;
 - (e) Iron and steel mills;
 - (f) Primary aluminum ore reduction plants;
 - (g) Primary copper smelters;
 - (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
 - (i) Hydrofluoric, sulfuric, or nitric acid plants;
 - (j) Petroleum refineries;
 - (k) Lime plants;
 - (l) Phosphate rock processing plants;
 - (m) Coke oven batteries;
 - (n) Sulfur recovery plants;
 - (o) Carbon black plants (furnace process);
 - (p) Primary lead smelters;
 - (q) Fuel conversion plants;
 - (r) Sintering plants;
 - (s) Secondary metal production plants;
 - (t) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
 - (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 - (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (w) Taconite ore processing plants;
 - (x) Glass fiber processing plants;
 - (y) Charcoal production plants;
 - (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
 - (aa) Any other stationary source category which, as of August 7, 1980, is being regulated under

- section 111 or 112 of the Act; or
- (viii) The source is a portable stationary source which has previously received a permit under this section, and
 - (a) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and
 - (b) The emissions from the source would not exceed its allowable emissions; and
 - (c) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and
 - (d) Reasonable notice is given to the Administrator 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 Administrator not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Administrator.
 - (ix) The source or modification was not subject to §52.21, with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:
 - (a) Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State implementation plan before July 31, 1987;
 - (b) Commenced construction within 18 months after July 31, 1987, or any earlier time required under the State implementation plan; and
 - (c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time.
 - (x) The source or modification was subject to 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987 and the owner or operator submitted an application for a permit under this section before that date, and the Administrator subsequently determines that the application as submitted was complete with respect to the particular matter requirements then in effect in the section. Instead, the requirements of paragraphs (j) through (r) of this section that were in effect before July 31, 1987 shall apply to such source or modification.
- (2) The requirements of paragraphs (j) through (r) of this section 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 Act. Nonattainment designations for revoked NAAQS, as contained in 40 CFR part 81, shall not be viewed as current designations under section 107 of the Act for purposes of determining the applicability of paragraphs (j) through (r) of this section to a major stationary source or major modification after the revocation of that NAAQS is effective.
- (3) The requirements of paragraphs (k), (m) and (o) of this section 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:
- (i) Would impact no Class I area and no area where an applicable increment is known to be violated, and
 - (ii) Would be temporary.
- (4) The requirements of paragraphs (k), (m) and (o) of this section 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 regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.
- (5) The Administrator may exempt a stationary source or modification from the requirements of paragraph (m) of this section, with respect to monitoring for a particular pollutant if:
- (i) 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 less than the following

amounts:

- (a) Carbon monoxide—575 µg/m³, 8-hour average;
- (b) Nitrogen dioxide—14 µg/m³, annual average;
- (c) PM_{2.5}—0 µg/m³;

Note to paragraph (i)(5)(i)(c): In accordance with *Sierra Club v. EPA*, 706 F.3d 428 (DC Cir. 2013), no exemption is available with regard to PM_{2.5}.

- (d) PM₁₀—10 µg/m³, 24-hour average;
- (e) Sulfur dioxide—13 µg/m³, 24-hour average;
- (f) Ozone;
- (g) Lead—0.1 µg/m³, 3-month average;
- (h) Fluorides—0.25 µg/m³, 24-hour average;
- (i) Total reduced sulfur—10 µg/m³, 1-hour average;
- (j) Hydrogen sulfide—0.2 µg/m³, 1-hour average;
- (k) Reduced sulfur compounds—10 µg/m³, 1-hour average; or

Note to paragraph (c)(50)(i)(f): No de minimis air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.

- (ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(5)(i) of this section; or
 - (iii) The pollutant is not listed in paragraph (i)(5)(i) of this section.
- (6) The requirements for best available control technology in paragraph (j) of this section and the requirements for air quality analyses in paragraph (m)(1) of this section, shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Administrator subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978 apply to any such source or modification.
- (7) (i) The requirements for air quality monitoring in paragraphs (m)(1) (ii) through (iv) of this section shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete with respect to the requirements of this section other than those in paragraphs (m)(1) (ii) through (iv) of this section, and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.
- (ii) The requirements for air quality monitoring in paragraphs (m)(1) (ii) through (iv) of this section shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in paragraphs (m)(1) (ii) through (iv).
- (8) (i) At the discretion of the Administrator, the requirements for air quality monitoring of PM₁₀ in paragraphs (m)(1) (i)-(iv) of this section 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 section on or before June 1, 1988 and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in paragraphs (m)(1) (i)-(iv).

- (ii) The requirements for air quality monitoring of PM_{10} in paragraphs (m)(1), (ii) and (iv) and (m)(3) of this section shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section 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 paragraph (m)(1)(viii) of this section, except that if the Administrator 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 paragraph (m)(1)(iii) requires shall have been gathered over a shorter period.
- (9) The requirements of paragraph (k)(1)(ii) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable implementation plan and the Administrator subsequently determined that the application as submitted before that date was complete.
- (10) The requirements in paragraph (k)(1)(ii) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM_{10} if (i) the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increases for PM_{10} took effect in an implementation plan to which this section applies, and (ii) the Administrator subsequently determined that the application as submitted before that date was otherwise complete. Instead, the requirements in paragraph (k)(1)(ii) shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.
- (11) The requirements of paragraph (k)(1) of this section shall not apply to a stationary source or modification with respect to the national ambient air quality standards for $PM_{2.5}$ in effect on March 18, 2013 if:
 - (i) The Administrator has determined a permit application subject to this section to be complete on or before December 14, 2012. Instead, the requirements in paragraph (k)(1) of this section shall apply with respect to the national ambient air quality standards for $PM_{2.5}$ in effect at the time the Administrator determined the permit application to be complete; or
 - (ii) The Administrator has first published before March 18, 2013 a public notice that a draft permit subject to this section has been prepared. Instead, the requirements in paragraph (k)(1) of this section shall apply with respect to the national ambient air quality standards for $PM_{2.5}$ in effect on the date the Administrator first published a public notice that a draft permit has been prepared.
- (12) The requirements of paragraph (k)(1) of this section shall not apply to a permit application for a stationary source or modification with respect to the revised national ambient air quality standards for ozone published on October 26, 2015 if:
 - (i) The Administrator has determined the permit application subject to this section to be complete on or before October 1, 2015. Instead, the requirements in paragraph (k)(1) of this section shall apply with respect to the national ambient air quality standards for ozone in effect at the time the Administrator determined the permit application to be complete; or
 - (ii) The Administrator has first published before December 28, 2015 a public notice of a preliminary determination or draft permit for the permit application subject to this section. Instead, the requirements in paragraph (k)(1) of this section shall apply with respect to the national ambient air quality standards for ozone in effect on the date the Administrator first published a public notice of a preliminary determination or draft permit.
- (j) Control technology review.
 - (1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR parts 60 and 61.
 - (2) A new major stationary source shall apply best available control technology for each regulated NSR

pollutant that it would have the potential to emit in significant amounts.

- (3) A major modification shall apply best available control technology for each regulated NSR pollutant 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.
- (4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 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 best available control technology for the source.

(k) Source impact analysis—

- (1) *Required demonstration.* 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:
 - (i) Any national ambient air quality standard in any air quality control region; or
 - (ii) Any applicable maximum allowable increase over the baseline concentration in any area.

(2) [Reserved]

(l) Air quality models.

- (1) All estimates of ambient concentrations required under this paragraph shall be based on applicable air quality models, data bases, and other requirements specified in appendix W of part 51 of this chapter (Guideline on Air Quality Models).
- (2) Where an air quality model specified in appendix W of part 51 of this chapter (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q) of this section.

(m) Air quality analysis—

(1) Preapplication analysis.

- (i) Any application for a permit under this section 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:
 - (a) For the source, each pollutant that it would have the potential to emit in a significant amount;
 - (b) For the modification, each pollutant for which it would result in a significant net emissions increase.
- (ii) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Administrator determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.
- (iii) 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.
- (iv) In general, the continuous air quality monitoring data that is required shall have been gathered over a

- period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.
- (v) For any application which becomes complete, except as to the requirements of paragraphs (m)(1) (iii) and (iv) of this section, between June 8, 1981, and February 9, 1982, the data that paragraph (m)(1)(iii) of this section, requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:
- (a) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.
- (b) If the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that paragraph (m)(1)(iii) of this section, requires shall have been gathered over at least that shorter period.
- (c) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Administrator may waive the otherwise applicable requirements of this paragraph (v) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.
- (vi) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR part 51 Appendix S, section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph (m)(1) of this section.
- (vii) For any application that becomes complete, except as to the requirements of paragraphs (m)(1) (iii) and (iv) pertaining to PM₁₀, after December 1, 1988 and no later than August 1, 1989 the data that paragraph (m)(1)(iii) 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 Administrator 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 paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.
- (viii) With respect to any requirements for air quality monitoring of PM₁₀ under paragraphs (i)(11) (i) and (ii) of this section the owner or operator of the source or modification shall use a monitoring method approved by the Administrator and shall estimate the ambient concentrations of PM₁₀ using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Administrator.
- (2) 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 Administrator determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.
- (3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to part 58 of this chapter during the operation of monitoring stations for purposes of satisfying paragraph (m) of this section.
- (n) *Source information.* The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.
- (1) With respect to a source or modification to which paragraphs (j), (l), (n) and (p) of this section apply, such information shall include:
- (i) 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;
- (ii) A detailed schedule for construction of the source or modification;

- (iii) 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 best available control technology would be applied.
- (2) Upon request of the Administrator, the owner or operator shall also provide information on:
- (i) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and
 - (ii) 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.
- (o) Additional impact analyses.
- (1) The owner or operator shall provide an analysis of the impairment to 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.
 - (2) 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.
 - (3) *Visibility monitoring.* The Administrator may require monitoring of visibility in any Federal class I area near the proposed new stationary source for major modification for such purposes and by such means as the Administrator deems necessary and appropriate.
- (p) Sources impacting Federal Class I areas—additional requirements—
- (1) *Notice to Federal land managers.* The Administrator shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal land manager and the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The Administrator shall also provide the Federal land manager and such Federal officials with a copy of the preliminary determination required under paragraph (q) of this section, and shall make available to them any materials used in making that determination, promptly after the Administrator makes such determination. Finally, the Administrator shall also notify all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.
 - (2) *Federal Land Manager.* The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Administrator, whether a proposed source or modification will have an adverse impact on such values.
 - (3) *Visibility analysis.* The Administrator shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (p)(1) of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the Administrator finds that such an analysis does not demonstrate to the satisfaction of the Administrator that an adverse impact on visibility will result in the Federal Class I area, the Administrator must, in the notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained.
 - (4) *Denial—impact on air quality related values.* The Federal Land Manager of any such lands may demonstrate to the Administrator 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

Administrator concurs with such demonstration, then he shall not issue the permit.

- (5) *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 State may authorize the Administrator: *Provided,* That the applicable requirements of this section are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, PM_{2.5}, PM₁₀, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
PM_{2.5}:	
Annual arithmetic mean	4
24-hr maximum	9
PM₁₀:	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

- (6) *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 (q)(4) of this section may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four 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 Administrator shall issue a permit to such source or modification pursuant to the requirements of paragraph (q)(7) of this section: *Provided,* That the applicable requirements of this section are otherwise met.
- (7) *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 the 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 Administrator shall issue a permit pursuant to the requirements of paragraph (q)(7) of this section: *Provided,* That the applicable requirements of this section are otherwise met.
- (8) *Emission limitations for Presidential or gubernatorial variance.* In the case of a permit issued pursuant to paragraph (q) (5) or (6) of this section 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 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase

[Micrograms per cubic meter]

Period of exposure	Terrain areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

(q) *Public participation.* The Administrator shall follow the applicable procedures of 40 CFR part 124 in processing applications under this section.

(r) Source obligation.

- (1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.
- (2) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Administrator may extend the 18-month period upon a 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 18 months of the projected and approved commencement date.
- (3) Approval to construct 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.
- (4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue 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 or paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.
- (5) [Reserved]
- (6) Except as otherwise provided in paragraph (r)(6)(vi)(b) of this section, the provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (r)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(a) through (c) of this section for calculating projected actual emissions.
 - (i) Before beginning actual construction of the project, the owner or operator shall document and

maintain a record of the following information:

- (a) A description of the project;
 - (b) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
 - (c) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (b)(41)(ii)(c) of this section and an explanation for why such amount was excluded, and any netting calculations, if applicable.
- (ii) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (r)(6)(i) of this section to the Administrator. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any determination from the Administrator before beginning actual construction.
- (iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph (r)(6)(i)(b) of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit that regulated NSR pollutant at such emissions unit.
- (iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Administrator within 60 days after the end of each year during which records must be generated under paragraph (r)(6)(iii) of this section setting out the unit's annual emissions during the calendar year that preceded submission of the report.
- (v) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Administrator if the annual emissions, in tons per year, from the project identified in paragraph (r)(6)(i) of this section, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (r)(6)(i)(c) of this section), by a significant amount (as defined in paragraph (b)(23) of this section) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (r)(6)(i)(c) of this section. Such report shall be submitted to the Administrator within 60 days after the end of such year. The report shall contain the following:
- (a) The name, address and telephone number of the major stationary source;
 - (b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and
 - (c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).
- (vi) A “reasonable possibility” under paragraph (r)(6) of this section occurs when the owner or operator calculates the project to result in either:
- (a) A projected actual emissions increase of at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph (b)(40) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or
 - (b) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (b)(41)(ii)(c) of this section, sums to at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph (b)(40) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (r)(6)(vi)(b) of this section, and not also within the meaning of paragraph (r)(6)(vi)(a) of this section, then provisions (r)(6)(ii) through (v) do not apply to the project.
- (7) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (r)(6) of this section available for review upon a request for inspection

by the Administrator or the general public pursuant to the requirements contained in §70.4(b)(3)(viii) of this chapter.

(s) *Environmental impact statements.* Whenever any proposed source or modification is subject to action by a Federal Agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this section shall be coordinated with the broad environmental reviews under that Act and under section 309 of the Clean Air Act to the maximum extent feasible and reasonable.

(t) *Disputed permits or redesignations.* If any State affected by the redesignation of an area by an Indian Governing Body, or any Indian Governing Body of a tribe affected by the redesignation of an area by a State, disagrees with such redesignation, or if a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any State which the Governor of an affected State or Indian Governing Body of an affected tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or Indian Reservation, the Governor or Indian Governing Body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian Governing Body involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable State implementation plan and shall be enforceable as part of such plan. In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.

(u) Delegation of authority.

- (1) The Administrator shall have the authority to delegate his responsibility for conducting source review pursuant to this section, in accordance with paragraph (u)(2) of this section.
- (2) Where the Administrator delegates the responsibility for conducting source review under this section to any agency other than a Regional Office of the Environmental Protection Agency, the following provisions shall apply:
 - (i) Where the delegate agency is not an air pollution control agency, it shall consult with the appropriate state, tribe, and local air pollution control agency prior to making any determination under this section. Similarly, where the delegate agency does not have continuing responsibility for managing land use, it shall consult with the appropriate state, tribe, and local agency primarily responsible for managing land use prior to making any determination under this section.
 - (ii) The delegate agency shall send a copy of any public comment notice required under paragraph (r) of this section to the Administrator through the appropriate Regional Office.
- (3) In the case of a source or modification which proposes to construct in a class III area, emissions from which would cause or contribute to air quality exceeding the maximum allowable increase applicable if the area were designated a class II area, and where no standard under section 111 of the act has been promulgated for such source category, the Administrator must approve the determination of best available control technology as set forth in the permit.

(v) Innovative control technology.

- (1) An owner or operator of a proposed major stationary source or major modification may request the Administrator in writing no later than the close of the comment period under 40 CFR 124.10 to approve a system of innovative control technology.
- (2) The Administrator shall, with the consent of the governor(s) of the affected state(s), determine that the source or modification may employ a system of innovative control technology, if:

- (i) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;
 - (ii) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph (j)(2) of this section, by a date specified by the Administrator. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;
 - (iii) The source or modification would meet the requirements of paragraphs (j) and (k) of this section, 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 Administrator;
 - (iv) The source or modification would not before the date specified by the Administrator:
 - (a) Cause or contribute to a violation of an applicable national ambient air quality standard; or
 - (b) Impact any area where an applicable increment is known to be violated; and
 - (v) All other applicable requirements including those for public participation have been met.
 - (vi) The provisions of paragraph (p) of this section (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.
- (3) The Administrator shall withdraw any approval to employ a system of innovative control technology made under this section, if:
- (i) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or
 - (ii) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or
 - (iii) The Administrator 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.
- (4) 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 (v)(3) of this section, the Administrator may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.
- (w) Permit rescission.
- (1) Any permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (r) of this section or is rescinded under this paragraph (w).
 - (2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirements in paragraph (w)(3) of this section may request that the Administrator rescind the permit or a particular portion of the permit.
 - (3) The Administrator may grant an application for rescission if the application shows that this section would not apply to the source or modification.
 - (4) If the Administrator rescinds a permit under this paragraph, the Administrator shall post a notice of the rescission determination on a public Web site identified by the Administrator within 60 days of the rescission,
- (x)-(z) [Reserved]
- (aa) *Actuals PALs*. The provisions in paragraphs (aa)(1) through (15) of this section govern actuals PALs.
- (1) *Applicability*.
 - (i) The Administrator may approve the use of an actuals PAL, including for GHGs on either a mass basis or a CO₂e basis, for any existing major stationary source or any existing GHG-only source if the PAL meets the requirements in paragraphs (aa)(1) through (15) of this section. The term “PAL” shall mean

- “actuals PAL” throughout paragraph (aa) of this section.
- (ii) Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit:
 - (a) Is not a major modification for the PAL pollutant;
 - (b) Does not have to be approved through the PSD program;
 - (c) Is not subject to the provisions in paragraph (r)(4) of this section (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program); and
 - (d) Does not make GHGs subject to regulation as defined by paragraph (b)(49) of this section.
 - (iii) Except as provided under paragraph (aa)(1)(ii)(c) of this section, a major stationary source or a GHG-only source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.
- (2) *Definitions.* For the purposes of this section, the definitions in paragraphs (aa)(2)(i) through (xi) of this section apply. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (b) of this section or in the Act.
- (i) **Actuals PAL** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (b)(48) of this section) of all emissions units (as defined in paragraph (b)(7) of this section) at the source, that emit or have the potential to emit the PAL pollutant. For a GHG-only source, *actuals PAL* means a PAL based on the baseline actual emissions (as defined in paragraph (aa)(2)(xiii) of this section) of all emissions units (as defined in paragraph (aa)(2)(xiv) of this section) at the source, that emit or have the potential to emit GHGs.
 - (ii) **Allowable emissions** means “allowable emissions” as defined in paragraph (b)(16) of this section, except as this definition is modified according to paragraphs (aa)(2)(ii)(a) and (b) of this section.
 - (a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.
 - (b) An emissions unit's potential to emit shall be determined using the definition in paragraph (b)(4) of this section, except that the words “or enforceable as a practical matter” should be added after “federally enforceable.”
 - (iii) **Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (b)(23) of this section or in the Act, whichever is lower. For a GHG PAL issued on a CO₂e basis, *small emissions unit* means an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO₂e basis defined as “significant” for the purposes of paragraph (b)(49)(iii) of this section at the time the PAL permit is being issued.
 - (iv) **Major emissions unit** means:
 - (a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or
 - (b) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.
 - (c) For a GHG PAL issued on a CO₂e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO₂e basis that would be sufficient for a new source to trigger permitting requirements under paragraph (b)(49) of this section at the time the PAL

- permit is being issued.
- (v) ***Plantwide applicability limitation (PAL)*** means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO₂e for a CO₂e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (aa)(1) through (15) of this section.
 - (vi) ***PAL effective date*** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
 - (vii) ***PAL effective period*** means the period beginning with the PAL effective date and ending 10 years later.
 - (viii) ***PAL major modification*** means, notwithstanding paragraphs (b)(2), (b)(3), and (b)(49) of this section (the definitions for major modification, net emissions increase, and subject to regulation), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.
 - (ix) ***PAL permit*** means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the State Implementation Plan, or the title V permit issued by the Administrator that establishes a PAL for a major stationary source or a GHG-only source.
 - (x) ***PAL pollutant*** means the pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is greenhouse gases.
 - (xi) ***Significant emissions unit*** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (b)(23) of this section or in the Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv) of this section. For a GHG PAL issued on a CO₂e basis, *significant emissions unit* means any emissions unit that emits or has the potential to emit GHGs on a CO₂e basis in amounts equal to or greater than the amount that would qualify the unit as small emissions unit as defined in paragraph (aa)(2)(iii) of this section, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv)(c) of this section.
 - (xii) ***GHG-only source*** means any existing stationary source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under paragraph (b)(1) of this section and the amount of GHGs on a CO₂e basis that would be sufficient for a new source to trigger permitting requirements for GHGs under paragraph (b)(49) of this section at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated NSR pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under paragraph (aa) of this section.
 - (xiii) ***Baseline actual emissions*** for a GHG PAL means the average rate, in tons per year CO₂e or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Administrator for a permit required under this section or by the permitting authority for a permit required by a plan, whichever is earlier. For any existing electric utility steam generating unit, *baseline actual emissions* for a GHG PAL means the average rate, in tons per year CO₂e or tons per year GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding either the date the owner or operator begins actual construction of the project, except that the Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation.
 - (a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions

associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source must currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by paragraphs (aa)(2)(xiii)(b) and (c) of this section.

(xiv) **Emissions unit** with respect to GHGs means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of this section, there are two types of emissions units as described in the following:

(a) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (aa)(2)(xiv)(a) of this section.

(xv) **Minor source** means any stationary source that does not meet the definition of major stationary source in paragraph (b)(1) of this section for any pollutant at the time the PAL is issued.

(3) **Permit application requirements.** As part of a permit application requesting a PAL, the owner or operator of a major stationary source or a GHG-only source shall submit the following information to the Administrator for approval:

(i) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.

(ii) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(iii) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph (aa)(13)(i) of this section.

(iv) As part of a permit application requesting a GHG PAL, the owner or operator of a major stationary source or a GHG-only source shall submit a statement by the source owner or operator that clarifies whether the source is an existing major source as defined in paragraph (b)(1)(i)(a) and (b) of this section or a GHG-only source as defined in paragraph (aa)(2)(xii) of this section.

(4) **General requirements for establishing PALs.**

(i) The Administrator is allowed to establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the requirements in paragraphs (aa)(4)(i)(a) through (g) of this section are met.

(a) The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO₂e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

- (b) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph (aa)(5) of this section.
 - (c) The PAL permit shall contain all the requirements of paragraph (aa)(7) of this section.
 - (d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.
 - (e) Each PAL shall regulate emissions of only one pollutant.
 - (f) Each PAL shall have a PAL effective period of 10 years.
 - (g) The owner or operator of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (aa)(12) through (14) of this section for each emissions unit under the PAL through the PAL effective period.
- (ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under §51.165(a)(3)(ii) of this chapter unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.
- (5) *Public participation requirements for PALs.* PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased through a procedure that is consistent with §§51.160 and 51.161 of this chapter. This includes the requirement that the Administrator provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Administrator must address all material comments before taking final action on the permit.
- (6) Setting the 10-year actuals PAL level.
- (i) Except as provided in paragraph (aa)(6)(ii) and (iii) of this section, the plan shall provide that the actuals PAL level for a major stationary source or a GHG-only source shall be established as the sum of the baseline actual emissions (as defined in paragraph (b)(48) of this section or, for GHGs, paragraph (aa)(2)(xiii) of this section) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (b)(23) of this section or under the Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The reviewing authority shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).
 - (ii) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in paragraph (aa)(6)(i) of this section, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.
 - (iii) For CO₂e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions (as defined in paragraph (aa)(2)(xiii) of this section) of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as “significant” on a CO₂e basis for the purposes of paragraph (b)(49)(iii) at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO₂e-based PAL, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The reviewing authority shall specify a reduced PAL level (in tons per year CO₂e)

- in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or state regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit.
- (7) *Contents of the PAL permit.* The PAL permit must contain, at a minimum, the information in paragraphs (aa)(7)(i) through (xi) of this section.
- (i) The PAL pollutant and the applicable source-wide emission limitation in tons per year or tons per year CO₂e.
 - (ii) The PAL permit effective date and the expiration date of the PAL (PAL effective period).
 - (iii) Specification in the PAL permit that if a major stationary source or a GHG-only source owner or operator applies to renew a PAL in accordance with paragraph (aa)(10) of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by a reviewing authority.
 - (iv) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.
 - (v) A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of paragraph (aa)(9) of this section.
 - (vi) The calculation procedures that the major stationary source or GHG-only source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by paragraph (aa)(13)(i) of this section.
 - (vii) A requirement that the major stationary source or GHG-only source owner or operator monitor all emissions units in accordance with the provisions under paragraph (aa)(12) of this section.
 - (viii) A requirement to retain the records required under paragraph (aa)(13) of this section on site. Such records may be retained in an electronic format.
 - (ix) A requirement to submit the reports required under paragraph (aa)(14) of this section by the required deadlines.
 - (x) Any other requirements that the Administrator deems necessary to implement and enforce the PAL.
 - (xi) A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation under paragraph (b)(49) of this section as long as the source complies with the PAL.
- (8) *PAL effective period and reopening of the PAL permit.* The requirements in paragraphs (aa)(8)(i) and (ii) of this section apply to actuals PALs.
- (i) *PAL effective period.* The Administrator shall specify a PAL effective period of 10 years.
 - (ii) Reopening of the PAL permit.
 - (a) During the PAL effective period, the Administrator must reopen the PAL permit to:
 - (1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;
 - (2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under §51.165(a)(3)(ii) of this chapter; and
 - (3) Revise the PAL to reflect an increase in the PAL as provided under paragraph (aa)(11) of this section.
 - (b) The Administrator shall have discretion to reopen the PAL permit for the following:
 - (1) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

- (2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source or GHG-only source under the State Implementation Plan; and
 - (3) Reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.
- (c) Except for the permit reopening in paragraph (aa)(8)(ii)(a)(1) of this section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (aa)(5) of this section.
- (9) *Expiration of a PAL.* Any PAL that is not renewed in accordance with the procedures in paragraph (aa)(10) of this section shall expire at the end of the PAL effective period, and the requirements in paragraphs (aa)(9)(i) through (v) of this section shall apply.
 - (i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (aa)(9)(i)(a) and (b) of this section.
 - (a) Within the time frame specified for PAL renewals in paragraph (aa)(10)(ii) of this section, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Administrator) by distributing the PAL allowable emissions for the major stationary source or GHG-only source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (aa)(10)(v) of this section, such distribution shall be made as if the PAL had been adjusted.
 - (b) The Administrator shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Administrator determines is appropriate.
 - (ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Administrator may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.
 - (iii) Until the Administrator issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (aa)(9)(i)(b) of this section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.
 - (iv) Any physical change or change in the method of operation at the major stationary source or GHG-only source will be subject to major NSR requirements if such change meets the definition of major modification in paragraph (b)(2) of this section.
 - (v) The major stationary source or GHG-only source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (r)(4) of this section, but were eliminated by the PAL in accordance with the provisions in paragraph (aa)(1)(ii)(c) of this section.
- (10) *Renewal of a PAL.*
 - (i) The Administrator shall follow the procedures specified in paragraph (aa)(5) of this section in approving any request to renew a PAL for a major stationary source or a GHG-only source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the

source for consideration by the Administrator.

- (ii) *Application deadline.* A major stationary source or GHG-only source owner or operator shall submit a timely application to the Administrator to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source or GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.
 - (iii) *Application requirements.* The application to renew a PAL permit shall contain the information required in paragraphs (aa)(10)(iii)(a) through (d) of this section.
 - (a) The information required in paragraphs (aa)(3)(i) through (iii) of this section.
 - (b) A proposed PAL level.
 - (c) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).
 - (d) Any other information the owner or operator wishes the Administrator to consider in determining the appropriate level for renewing the PAL.
 - (iv) *PAL adjustment.* In determining whether and how to adjust the PAL, the Administrator shall consider the options outlined in paragraphs (aa)(10)(iv)(a) and (b) of this section. However, in no case may any such adjustment fail to comply with paragraph (aa)(10)(iv)(c) of this section.
 - (a) If the emissions level calculated in accordance with paragraph (aa)(6) of this section is equal to or greater than 80 percent of the PAL level, the Administrator may renew the PAL at the same level without considering the factors set forth in paragraph (aa)(10)(iv)(b) of this section; or
 - (b) The Administrator may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Administrator in his or her written rationale.
 - (c) Notwithstanding paragraphs (aa)(10)(iv)(a) and (b) of this section:
 - (1) If the potential to emit of the major stationary source or GHG-only source is less than the PAL, the Administrator shall adjust the PAL to a level no greater than the potential to emit of the source; and
 - (2) The Administrator shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of paragraph (aa)(11) of this section (increasing a PAL).
 - (v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Administrator has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.
- (11) Increasing a PAL during the PAL effective period.
- (i) The Administrator may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the provisions in paragraphs (aa)(11)(i)(a) through (d) of this section.
 - (a) The owner or operator of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary or GHG-only source's emissions to equal or exceed its PAL.
 - (b) As part of this application, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application

of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph (aa)(11)(i)(a) of this section, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

- (ii) The Administrator shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph (aa)(11)(i)(b)), plus the sum of the baseline actual emissions of the small emissions units.
- (iii) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph (aa)(5) of this section.

(12) Monitoring requirements for PALs.

(i) General requirements.

(a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time or CO₂e per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (aa)(12)(ii)(a) through (d) of this section and must be approved by the Administrator.

(c) Notwithstanding paragraph (aa)(12)(i)(b) of this section, you may also employ an alternative monitoring approach that meets paragraph (aa)(12)(i)(a) of this section if approved by the Administrator.

(d) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

- (ii) Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (aa)(12)(iii) through (ix) of this section:

- (a) Mass balance calculations for activities using coatings or solvents;
- (b) CEMS;
- (c) CPMS or PEMS; and
- (d) Emission factors.

- (iii) *Mass balance calculations.* An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

- (a) Provide a demonstrated means of validating the published content of the PAL pollutant that is

- contained in or created by all materials used in or at the emissions unit;
- (b) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
- (c) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Administrator determines there is site-specific data or a site-specific monitoring program to support another content within the range.
- (iv) *CEMS*. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
- (a) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and
- (b) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.
- (v) *CPMS or PEMS*. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
- (a) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and
- (b) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Administrator, while the emissions unit is operating.
- (vi) *Emission factors*. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
- (a) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
- (b) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
- (c) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Administrator determines that testing is not required.
- (vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.
- (viii) Notwithstanding the requirements in paragraphs (aa)(12)(iii) through (vii) of this section, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Administrator shall, at the time of permit issuance:
- (a) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or
- (b) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.
- (ix) *Re-validation*. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Administrator. Such testing must occur at least once every 5 years after issuance of the PAL.
- (13) Recordkeeping requirements.

- (i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (aa) of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.
- (ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:
 - (a) A copy of the PAL permit application and any applications for revisions to the PAL; and
 - (b) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.
- (14) *Reporting and notification requirements.* The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Administrator in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (aa)(14)(i) through (iii) of this section.
 - (i) *Semi-annual report.* The semi-annual report shall be submitted to the Administrator within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (aa)(14)(i)(a) through (g) of this section.
 - (a) The identification of owner and operator and the permit number.
 - (b) Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO₂e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (aa)(13)(i) of this section.
 - (c) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.
 - (d) A list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding 6-month period.
 - (e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.
 - (f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by (aa)(12)(vii).
 - (g) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.
 - (ii) *Deviation report.* The major stationary source or GHG-only source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to §70.6(a)(3)(iii)(B) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing §70.6(a)(3)(iii)(B) of this chapter. The reports shall contain the following information:
 - (a) The identification of owner and operator and the permit number;
 - (b) The PAL requirement that experienced the deviation or that was exceeded;
 - (c) Emissions resulting from the deviation or the exceedance; and
 - (d) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.
 - (iii) *Re-validation results.* The owner or operator shall submit to the Administrator the results of any re-validation test or method within 3 months after completion of such test or method.
- (15) Transition requirements.

- (i) The Administrator may not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) of this section after March 3, 2003.
- (ii) The Administrator may supersede any PAL that was established prior to March 3, 2003 with a PAL that complies with the requirements of paragraphs (aa)(1) through (15) of this section.

(bb) If any provision of this section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(cc) Without regard to other considerations, routine maintenance, repair and replacement includes, but is not limited to, the replacement of any component of a process unit with an identical or functionally equivalent component(s), and maintenance and repair activities that are part of the replacement activity, provided that all of the requirements in paragraphs (cc)(1) through (3) of this section are met.

(1) Capital cost threshold for equipment replacement.

- (i) For an *electric utility steam generating unit*, as defined in §52.21(b)(31), the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced. For a process unit that is not an electric utility steam generating unit the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced.
- (ii) In determining the replacement value of the process unit; and, except as otherwise allowed under paragraph (cc)(1)(iii) of this section, the owner or operator shall determine the replacement value of the process unit on an estimate of the fixed capital cost of constructing a new process unit, or on the current appraised value of the process unit.
- (iii) As an alternative to paragraph (cc)(1)(ii) of this section for determining the replacement value of a process unit, an owner or operator may choose to use insurance value (where the insurance value covers only complete replacement), investment value adjusted for inflation, or another accounting procedure if such procedure is based on Generally Accepted Accounting Principles, provided that the owner or operator sends a notice to the reviewing authority. The first time that an owner or operator submits such a notice for a particular process unit, the notice may be submitted at any time, but any subsequent notice for that process unit may be submitted only at the beginning of the process unit's fiscal year. Unless the owner or operator submits a notice to the reviewing authority, then paragraph (cc)(1)(ii) of this section will be used to establish the replacement value of the process unit. Once the owner or operator submits a notice to use an alternative accounting procedure, the owner or operator must continue to use that procedure for the entire fiscal year for that process unit. In subsequent fiscal years, the owner or operator must continue to use this selected procedure unless and until the owner or operator sends another notice to the reviewing authority selecting another procedure consistent with this paragraph or paragraph (cc)(1)(ii) of this section at the beginning of such fiscal year.

(2) *Basic design parameters.* The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.

- (i) Except as provided in paragraph (cc)(2)(iii) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.
- (ii) Except as provided in paragraph (cc)(2)(iii) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will

typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

- (iii) If the owner or operator believes the basic design parameter(s) in paragraphs (cc)(2)(i) and (ii) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).
 - (iv) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (cc)(2)(i) and (ii) of this section.
 - (v) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.
 - (vi) Efficiency of a process unit is not a basic design parameter.
- (3) The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.

NOTE TO PARAGRAPH (cc): By a court order on December 24, 2003, this paragraph (cc) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in the FEDERAL REGISTER advising the public of the termination of the stay.

[43 FR 26403, June 19, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §52.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EFFECTIVE DATE NOTE: At 76 FR 17556, Mar. 30, 2011, §52.21(b)(2)(v) and (b)(3)(iii)(e) were stayed indefinitely.