Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

1100 Air Quality Management Section

1130 Title V State Operating Permit Program

12/11/10

1.0 Program Overview

Title V of the Clean Air Act Amendments of November 15, 1990 require that the U.S. Environmental Protection Agency (EPA) promulgate regulations calling for states to establish new operating permit programs or amend existing programs so that they satisfy the minimum requirements of EPA's regulations. EPA promulgated these regulations on July 21, 1992, 57 Fed. Reg. 32,250 et seq. The regulations are published at 40 CFR Part 70.

The Department is adopting this regulation pursuant to **7 Del.C. Ch 60**. This regulation shall take effect upon approval by the EPA.

The Department is adopting the operating permit program contained in this regulation to satisfy the requirements of both 40 CFR Part 70, and Title V of the Clean Air Act. This regulation will fully comport with all federal operating permit requirements.

This regulation only addresses the requirements for operating permits under Title V of the Clean Air Act. Any applicable construction permit requirements are not included in this regulation. The operating permit regulations do not provide for the establishment of any new substantive control requirements. The emissions standards or limitations to be included in operating permits are those contained in existing regulations, future construction permits and regulations, and any others contained in applicable control requirements. Under EPA's regulations, certain state requirements are not federally enforceable and must be so designated in operating permits issued for sources subject to the Department's regulations.

11/15/1993

2.0 Definitions

The following definitions apply to this regulation. Except as specifically provided in 2.0 of this regulation, terms used in this regulation retain the meaning accorded them under the applicable requirements of the Act.

"Act" means the Clean Air Act, as amended by the Clean Air Act Amendments of November 15, 1990, 42 U.S.C. 7401 et seq.

"Affected source" means a source that includes one or more *affected units*.

"Affected states" mean all states:

(1) that

(a) are one of the following contiguous states: Maryland, New Jersey and Pennsylvania; and

(b) in the judgment of the Department, may be directly affected by emissions from the facility seeking the permit, permit modification, or permit renewal being proposed; or

(2) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to emission reduction requirements or limitations under Title IV (Acid Disposition Control) of the Act, as defined.

"Applicable requirement" means all of the following as they apply to emissions units in a covered source subject to this regulation (including requirements that have been promulgated or approved by EPA through

rulemaking at the time of issuance but have future-effective compliance dates, provided that those requirements will, upon the effective compliance date, be applicable to the operations addressed in the permit):

(1) Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I (Air pollution Prevention and Control) of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR, Part 52 (Approval and Promulgation of Implementation Plans);

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I (Air Pollution Prevention and Control), including Parts C (Prevention of Significant Deterioration of Air Quality) or D (Plan Requirements for Nonattainment Areas), of the Act;

(3) Any standard or other requirement under section 111 (Standards of Performance for New Stationary Sources) of the Act, including section 111(d);

(4) Any standard or other requirement under section 112 (Hazardous Air Pollutants) of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including the contents of any risk management plan required under section 112(r) of the Act;

(5) Any standard or other requirement of the acid rain program under Title IV (Acid Disposition Control) of the Act, or the regulations promulgated thereunder;

(6) Any requirements established pursuant to section 504(b) (Permit Requirements and Conditions - Monitoring and Analysis) or section 114(a)(3) (Inspections, Monitoring and Entry), of the Act;

(7) Any standard or other requirement governing solid waste incineration, under section 129 (Solid Waste Combustion) of the Act;

(8) Any standard or other requirement for consumer and commercial products, under section 183(e) (Federal Ozone Measures – Control of Emissions from Certain Sources) of the Act;

(9) Any standard or other requirement for tank vessels, under section 183(f) (Federal Ozone Measures - Tank Vessel Standards) of the Act;

(10)Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 (Air Pollution from Outer Continental Shelf Activities) of the Act;

(11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI (Stratospheric Ozone Protection) of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V (Permits) permit; and

(12) Any national ambient air quality standard or increment or visibility requirement under Part C (Prevention of Significant Deterioration of Air Quality) of Title I (Air Pollution Prevention and Control) of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) (Inspection, Monitoring and Entry - Temporary Sources) of the Act.

"Area source" means any stationary source of hazardous air pollutants that is not a major source. For purposes of this regulation, the term "area source" shall not include motor vehicles or nonroad vehicles subject to regulation under Title II (National Emission Standards) of the Act.

"Covered source" means sources to which this regulation applies pursuant to 3.0 of this regulation.

"Department" means the Delaware Department of Natural Resources and Environmental Control as defined in **29 Del.C. Ch 80**, as amended.

"Designated representative" means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer or disposition of allowances allocated to a unit and the submission of and compliance with permits, permit applications and compliance plans for the unit, and shall have the meaning given to it in the regulations promulgated under the Act.

"Draft permit" means the version of a permit for which the Department offers public participation under 7.10 or affected state review under 8.1 of this regulation.

"Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emission unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) (Hazardous Air Pollutants - List of Pollutants) of the Act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV (Acid Disposition Control) of the Act.

"The EPA or the Administrator" means the Administrator of the EPA or his designee.

"Final permit" means the version of a Part 70 permit issued by the Department that has completed all review procedures required by 7.0 and 8.0 of this regulation.

"Fugitive emissions" mean those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(1) A major source under section 112 (Hazardous Air Pollutants) of the Act, defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year ("tpy") or more of any hazardous air pollutant which has been listed pursuant to section 112(b) (Hazardous Air Pollutants - List of Pollutants) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants, as defined in section 302 (Title III - General Definitions) of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) (Title III - General Definitions) of the Act, unless the source belongs to one of the following categories of stationary sources:

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

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

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

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) All other stationary source categories regulated by a standard promulgated under section 111 (Standards of Performance for New Stationary Sources) or section 112 (Hazardous Air Pollutants) of the Act, but only with respect to those air pollutants that have been regulated for that category.

(3) A major stationary source as defined in Part D (Plan Requirements for Nonattainment Areas) of Title I (Air Pollution Prevention and Control) of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f) (1) (2) (Plan Submissions and Requirements – NO_x Requirements) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 (Control of Interstate Ozone Air Pollution) of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) that are classified as "serious", and

(B) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM_{10}) nonattainment areas classified as "serious", sources with the potential to emit 70 tpy or more of PM_{10}.

(4) For purposes of this regulation, a research and development operation may be treated as a separate source from other stationary sources that are located on a contiguous or adjacent property and under common control only if that operation belongs to a different major group as described in the Standard Industrial Classification Manual, 1987.

"Part 70 permit or permit" (unless the context suggests otherwise) means any permit or group of permits covering a covered source that is issued, renewed, amended, or revised pursuant to this regulation.

"Part 70 program or state program" means a program approved by the Administrator under 40 CFR Part 70 (State Operating Permit Programs).

"Part 70 or Part 70 regulations" means EPA's regulations published at 40 CFR Part 70, July 21, 1992 (State Operating Permit Programs).

"Permit modification" means a revision to a Part 70 permit that meets the requirements of 7.5 of this regulation.

"Permit revision" means any permit modification or administrative permit amendment.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator or the Department. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV (Acid Disposition Control) of the Act, or the regulations promulgated thereunder.

"Proposed permit" means the version of a permit that the Department proposes to issue and forwards to the Administrator for review in compliance with 8.0 of this regulation.

"Regulated air pollutant" means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard promulgated under section 111 (Standards of Performance for New Stationary Sources) of the Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by Title VI (Stratospheric Ozone Protection) of the Act; or

(5) Any pollutant subject to standards promulgated under section 112(d), (f) and (h) (Hazardous Air Pollutants), or other requirements established under sections 112(g), (j), and (r) of the Act. Where such a standard or other requirement applies only to one or more sources or categories of sources of an air pollutant, that pollutant is a "regulated air pollutant" only with respect to those sources or categories. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated as to that source on the date 18 months after the applicable date established pursuant to section 112(e) of the Act.

"Responsible official" means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit, and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter, 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively, or the delegation of authority to a representative approved in advance by the Department;

(3) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this regulation, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV (Acid Disposition Control) of the Act, or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this regulation.

"Section 502(b)(10) changes" (Permit Programs - Regulations) mean changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

"Source category" means sources which may have the same or similar operations, emissions, activities; which may emit the same type of regulated air pollutants; which are subject to the same or similar standards,

limitations and operating requirements; or which may be subject to the same or similar monitoring requirements.

"Source category permit" means a Part 70 permit that meets the requirements of 6.4 of this regulation.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) (Hazardous Air Pollutants - List of Pollutants) of the Act.

"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 EPA, 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:

(1) Greenhouse gases (GHG), the air pollutant defined in 40 CFR 86.1818 – 12(a), September 2, 2010, as the aggregate group of six greenhouse gases: carbon dioxide (CO_2), nitrous oxide (N_2O), methane (CH_4), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF_6), shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO_2 equivalent emissions.

(2) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHG, by the gas's associated global warming potential as shown in Table 2-1 of this regulation "Global Warming Potentials", and summing the resultant value for each to compute a tpy CO_2e.

Table 2-1
GLOBAL WARMING POTENTIALS

Name	CAS No.	Chemical formula	Global warming potential (100 yr.)
Carbon dioxide	124–38–9	CO_2	1
Methane	74–82–8	CH_4	21
Nitrous oxide	10024–97–2	N_2O	310
HFC–23	75–46–7	CHF_3	11,700
HFC–32	75–10–5	CH_2F_2	650
HFC–41	593–53–3	CH_3F	150
HFC–125	354–33–6	C_2HF_5	2,800
HFC–134	359–35–3	$C_2H_2F_4$	1,000
HFC–134a	811–97–2	CH_2FCF_3	1,300
HFC–143	430–66–0	$C_2H_3F_3$	300
HFC–143a	420–46–2	$C_2H_3F_3$	3,800
HFC–152	624–72–6	CH_2FCH_2F	53
HFC–152a	75–37–6	CH_3CHF_2	140
HFC–161	353–36–6	CH_3CH_2F	12
HFC–227ea	431–89–0	C_3HF_7	2,900
HFC–236cb	677–56–5	$CH_2FCF_2CF_3$	1,340
HFC–236ea	431–63–0	CHF_2CHFCF_3	1,370
HFC–236fa	690–39–1	$C_3H_2F_6$	6,300
HFC–245ca	679–86–7	$C_3H_3F_5$	560
HFC–245fa	460–73–1	$CHF_2CH_2CF_3$	1,030
HFC–365mfc	406–58–6	$CH_3CF_2CH_2CF_3$	794

HFC–43–10mee	138495–42–8	$CF_3CFHCFHCF_2CF_3$	1,300
Sulfur hexafluoride	2551–62–4	SF_6	23,900
PFC–14 (Perfluoromethane)	75–73–0	CF_4	6,500
PFC–116 (Perfluoroethane)	76–16–4	C_2F_6	9,200
PFC–218 (Perfluoropropane)	76–19–7	C_3F_8	7,000
Perfluorocyclopropane	931–91–9	$C\text{-}C_3F_6$	17,340
PFC–3–1–10 (Perfluorobutane)	355–25–9	C_4F_{10}	7,000
Perfluorocyclobutane	115–25–3	$C\text{-}C_4F_8$	8,700
PFC–4–1–12 (Perfluoropentane)	678–26–2	C_5F_{12}	7,500
PFC–5–1–14 (Perfluorohexane)	355–42–0	C_6F_{14}	7,400
PFC–9–1–18	306–94–5	$C_{10}F_{18}$	7,500

14 DE Reg. 579 (12/01/10)

11/15/1993

3.0 Applicability

3.1 Covered Sources. Except as exempted from the requirement to obtain a permit under 3.2 of this regulation and elsewhere herein, the following sources are subject to the permitting requirements under this regulation:

3.1.1 Any major source;

3.1.2 Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 (Standards of Performance for New Stationary Sources) of the Act;

3.1.3 Any source, including an area source, subject to a standard or other requirement under section 112 (National Emissions Standards for Hazardous Air Pollutants) of the Act, 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 the Act;

3.1.4 Any affected source; and

3.1.5 Any source that is subject to applicable requirements.

3.2 Source Category Exemptions

3.2.1 All sources listed in 3.1 of this regulation that are not (i) major sources, (ii) affected sources, or (iii) solid waste incineration units required to obtain a permit pursuant to section 129(e) (Solid Waste Combustion - Permits) of the Act, are exempt from the obligation to obtain a Part 70 permit. Any such exempt source may opt to apply for a permit under this regulation and shall be issued a permit if the applicant otherwise satisfies all of the requirements of this regulation.

3.2.2 Sources in the following source categories are exempted from the obligation to obtain a permit under this regulation:

3.2.2.1 All sources in 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

3.2.2.2 All sources in source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M, "National Emission Standards for Hazardous Air Pollutants" for Asbestos, section 61.145, "Standard for Demolition and Renovation".

3.3 Emissions Units and Covered Sources

3.3.1 For major sources, the permit shall include all applicable requirements for all emissions units in the major source.

3.3.2 For any nonmajor source subject to the Part 70 Program under 3.1 or 3.2 of this regulation, the permit shall include all applicable requirements applicable to emissions units that cause the source to be subject to the Part 70 Program.

3.4 Fugitive Emissions. Fugitive emissions from a covered source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

3.5 Nonmajor Sources. In the case of nonmajor sources subject to a standard or other requirement under either section 111 or section 112 of the Act after July 21, 1992, the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a Part 70 Permit at the time that the new standard is promulgated.

3.6 Variances. Any determination by the Secretary to not require a permit under **7 Del.C. Ch 60, §6003(e)**, or any variance granted by the Secretary under **7 Del.C. Ch 60, §601**1, shall not apply to this rule until such time as the exemption or variance is approved by the Administrator.

11/15/1993

4.0 Reserved

11/15/1993

5.0 Permit Applications

5.1 Duty to Apply

5.1.1 Timely Application

5.1.1.1 The owners or operators of covered sources, as of the date the program is approved by EPA and becomes effective (the "effective date"), shall file applications on the following schedule:

5.1.1.1.1 Sources that have the potential to emit in the aggregate 150 tons per year or less of regulated air pollutants shall file complete applications within six months of the effective date, provided that, upon request and for good cause shown, the Department may allow a source additional time up to 12 months from the effective date; and

5.1.1.1.2 All other sources shall file complete applications within 12 months of the effective date; and

5.1.1.1.3 Sources requesting creation of a source category shall submit a petition within 90 days of the effective date. If the Department finds that a source category is not appropriate, the source shall file a complete standard application within 12 months of the effective date.

5.1.1.2 The owners or operators of a source that becomes subject to the operating permit program established by this regulation at any time following the effective date shall file a complete application or petition for establishment of a source category or submit a source category application for a previously-adopted source category within 12 months of the date on which the source first becomes subject to the program.

5.1.1.3 Notwithstanding the deadlines established in 5.1.1.1 and 5.1.1.2 of this regulation, a complete application filed at any time following submission of the State program to EPA for approval and before such time as the State program is approved, shall be accepted for processing.

5.1.1.4 A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of the Act, shall file a complete application to obtain an operating permit or permit amendment or modification within 12 months of commencing operation, provided that, a source that is required to obtain a preconstruction permit may submit an application for an operating permit or permit modification for concurrent processing. An operating permit application submitted for concurrent processing shall be submitted with the source's preconstruction review application or at such later time as the Department may allow. Where an existing Part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

5.1.1.5 Covered sources shall file an application for renewal of an operating permit at least six months before the date of permit expiration, unless a longer period [not to exceed 18 months] is specified in the permit.

5.1.1.6 Sources required to submit applications for initial phase II acid rain permits shall submit such applications to the Department by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides as specified in 40 CFR, Part 70.5(a)(iv).

5.1.1.7 The applicant is encouraged to consult with Department personnel before submitting an application or, at any other time, concerning the operation, construction, expansion, or modification of any installation, or concerning the required pollution control devices or system, the efficiency of such devices or system, or the pollution problem related to the installation.

5.1.2 Complete Application

5.1.2.1 The Department shall review each application, including each petition for establishment of a source category, for completeness, and shall inform the applicant within 60 days of receipt if the application is incomplete or if a source category is not appropriate. In order to be complete for purposes of 5.0 of this regulation, an application must include a completed application form and, to the extent not called for by the form, the information required in 5.4 of this regulation. Unless the Department requests additional information or otherwise notifies the applicant of incompleteness within 60 days of an application, an application will be deemed complete if it contains the information required by the application form and 5.4 of this regulation.

5.1.2.2 If the Department does not notify the source within 60 days of receipt that its application is incomplete or that a source category petition is not applicable, the application or source category petition shall be deemed complete. However, nothing in 5.1.2 of this regulation shall prevent the Department from requesting additional information that is necessary to process the application.

5.1.2.3 If, while processing an application that has been determined or deemed to be complete, the Department determines that additional relevant information is reasonably necessary to evaluate or take final action on that application, the Department may request such additional information in writing. In requesting such information, the Department shall establish a reasonable deadline for a response. The applicant may request an extension of the deadline for the response.

5.1.2.4 In submitting an application for renewal of an operating permit issued under this regulation, a source may identify terms and conditions in its previous permit that should remain unchanged and

incorporate by reference those portions of its existing permit and the permit application and any permit amendment or modification applications that describe products, processes, operations, and emissions to which those terms and conditions apply. The source must identify specifically and list which portions of its previous permit or applications are incorporated by reference. The Department shall review the list of terms and conditions from the previous permit that the source submits to be unchanged and make a determination as to the terms and conditions to be incorporated into the renewed permit. In addition, a renewal application must contain:

5.1.2.4.1 information specified in 5.4 of this regulation for those products, processes, operations, and emissions that

5.1.2.4.1.1 are not addressed in the existing permit;

5.1.2.4.1.2 are subject to applicable requirements that are not addressed in the existing permit; or

5.1.2.4.1.3 the source seeks permit terms and conditions that differ from those in the existing permit; and

5.1.2.4.2 a compliance plan and certification as required in 5.4.8 of this regulation.

5.1.3 Checklist

5.1.3.1 The Department shall make available to applicants application forms, together with a checklist of items required for a complete application package. An application will be deemed complete in the first instance if the applicant supplies a completed application form, together with the other items on the checklist, and complies with any requests from the Department for additional information.

5.1.3.2 No completeness determination shall be required for applications for minor permit modification procedures under 7.5.1 of this regulation. The foregoing does not relieve the applicant from the requirement to submit a complete application in accordance with 7.5 of this regulation.

5.1.4 Confidential Information. If a source submits information to the Department under a claim of confidentiality, the source shall also submit a copy of such information directly to the Administrator, if the Department requests that the source do so. Confidential information shall meet the requirements of **7 Del.C., Ch 60, §6014, and 29 Del.C., Ch 100**. However, by submitting a permit application, a source waives any right to confidentiality as to the contents of its permit, and the permit contents will not be entitled to protection under **7 Del.C., Ch 60, §6014**.

5.2 Duty to Supplement or Correct Application

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

5.3 Insignificant Activities.

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, including those that become applicable after the effective date of this regulation. The emissions from the activities listed in Appendix A of this regulation shall be included for purposes of determining whether a source is subject to this rule, or when determining the applicability of any applicable requirement.

5.4 Standard Application Form and Required Information

Covered sources shall submit applications on the standard application form or the source category permit application form that the Department provides for that purpose. The application must include information needed to determine the applicability of any applicable requirement or to evaluate the fee amount as established from time to time by the Delaware General Assembly. The applicant shall submit the information called for by the application form for each emissions unit at the source to be permitted, except for insignificant activities listed on Appendix A of this regulation and those activities listed in 3.2.2 of this regulation. The source must provide a list of any such activities that are excluded because of size, emissions rate, or production rate; however, an application may not omit information needed to determine the applicability of, or to impose, an applicable requirement. The emissions from the activities listed in Appendix A of this regulation shall be included for purposes of determining whether a source is subject to this rule, or when determining the applicability of any applicable requirement. The standard application form and any attachments shall require that the following information be provided:

5.4.1 Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/ contact.

5.4.2 A description of the source's processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

5.4.3 The following emissions-related information:

5.4.3.1 All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under 5.4 or 3.2 of this regulation. The source shall submit additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to determine the amount of any permit fees owed under the fee schedule as established from time to time by the Delaware General Assembly.

5.4.3.2 Identification and description of all points of emissions described in 5.4.3.1 of this regulation in sufficient detail to establish the basis for fees and applicability of the Act's requirements.

5.4.3.3 Emissions rates in tons per year, and in such terms as are necessary to establish compliance consistent with the applicable regulation and with the applicable standard reference test method, if any.

5.4.3.4 The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

5.4.3.5 Identification and description of air pollution control equipment and compliance monitoring devices or activities.

5.4.3.6 Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the covered source.

5.4.3.7 Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

5.4.3.8 Calculations on which the information in 5.4.3.1 through 5.4.3.7 of this regulation is based.

5.4.4 The following air pollution control requirements:

5.4.4.1 Citation and description of all applicable requirements, and

5.4.4.2 Description of or reference to any applicable test method for determining compliance with each applicable requirement.

5.4.5 Other specific information required under **7 DE Admin. Code 1100**, "Regulations Governing the Control of Air Pollution," to implement and enforce other applicable requirements of the Act or of this regulation, or to determine the applicability of such requirements.

5.4.6 An explanation of any proposed exemptions from otherwise applicable requirements.

5.4.7 Additional information as determined to be necessary by the Department to define alternative operating scenarios identified by the source pursuant to 6.1.10 of this regulation or to define permit terms and conditions implementing 6.8 or 6.1.11 of this regulation.

5.4.8 A compliance plan for all covered sources that contains all the following:

5.4.8.1 A description of the compliance status of the source with respect to all applicable requirements.

5.4.8.2 A description as follows:

5.4.8.2.1 For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

5.4.8.2.2 For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

5.4.8.2.3 For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

5.4.8.3 A compliance schedule as follows:

5.4.8.3.1 For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

5.4.8.3.2 For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

5.4.8.3.3 A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance will be supplemental to, and shall not sanction noncompliance with, the applicable requirements upon which it is based.

5.4.8.4 A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance under 5.4.8 of this regulation.

5.4.8.5 The compliance plan content requirements specified in 5.4.8 of this regulation shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method or methods the source will use to achieve compliance with the acid rain emissions limitations.

5.4.9 Requirements for compliance certification, including the following:

5.4.9.1 A certification of compliance with all applicable requirements by a responsible official consistent with 5.6 of this regulation and section 114(a)(3) of the Act;

5.4.9.2 A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

5.4.9.3 A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if specified by an underlying applicable requirement or by the Department; and

5.4.9.4 A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

5.4.10 The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act

5.5 Source Category Permit Application Form

The Department shall provide for a source category permit Application Form for each designated source category approved for such permit coverage, which shall require such information as the Department determines is necessary to evaluate the appropriateness and applicability of the source for inclusion under the provisions of a source category. An applicant shall submit the information called-for by the application, which shall meet the requirements of Title V of the Act, and include all information necessary to determine qualification for and to ensure compliance with the source category permit.

5.6 Certification

Any application form, report, or compliance certification submitted pursuant to this regulation shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this regulation shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

12/11/2000

6.0 Permit Contents

6.1 Standard Permit Requirements. Each permit issued under this regulation shall include all applicable requirements that apply to the permitted source at the time of issuance. Each permit shall include the following elements:

6.1.1 Emission Limitations and Standards. The permit shall specify emissions limitations and standards that constitute applicable requirements, and shall include those operational requirements and limitations necessary to assure compliance with all applicable requirements at the time of permit issuance.

6.1.1.1 The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

6.1.1.2 The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by EPA.

6.1.1.3 If an applicable implementation plan or an applicable requirement allows a source to comply through an alternative emission limit or means of compliance, a source may request that such an alternative limit or means of compliance be specified in its permit. Such an alternative emission limit or means of compliance shall be included in a source's permit upon a showing that it is

quantifiable, accountable, enforceable, and based on replicable procedures. The source shall propose permit terms and conditions to satisfy these requirements in its application.

6.1.2 Permit Duration. The permit shall specify a fixed term. The Department shall issue permits for any fixed period requested in the permit application, not to exceed five years, except as provided in 6.1.2.1 and 6.1.2.2 of this regulation:

6.1.2.1 Permits issued to affected sources shall in all cases have a fixed term of five years.

6.1.2.2 Permits issued to solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

6.1.3 Monitoring and Related Recordkeeping and Reporting Requirements.

6.1.3.1 Each permit shall contain the following requirements with respect to monitoring:

6.1.3.1.1 All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

6.1.3.1.2 Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to 6.1.3.3 of this regulation. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of 6.1.3 of this regulation; and

6.1.3.1.3 As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

6.1.3.2 With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

6.1.3.2.1 Records of required monitoring information that include the following:

6.1.3.2.1.1 The date, place as defined in the permit, and time of sampling or measurements;

6.1.3.2.1.2 The date(s) analyses were performed;

6.1.3.2.1.3 The company or entity that performed the analyses;

6.1.3.2.1.4 The analytical techniques or methods used;

6.1.3.2.1.5 The results of such analyses; and

6.1.3.2.1.6 The operating conditions as existing at the time of sampling or measurement.

6.1.3.2.2 Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings, where appropriate, for continuous monitoring instrumentation, and copies of all reports required by the permit. Where appropriate, the permit may specify that records may be maintained in computerized form.

6.1.3.2.3 Unless otherwise mandated by applicable requirements, a permit may require that records be kept of data, or periodic samples of monitoring data, where such data are, in the judgment of the Department, adequate and necessary to demonstrate continued compliance with the terms and conditions of the permit. The provision of 6.1.3.2.3 of this regulation shall not supersede 6.1.3.2.1 or 6.1.3.2.2 of this regulation.

6.1.3.3 With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

6.1.3.3.1 A permit issued under these regulations shall require the permittee to submit a report of any required monitoring every six months. To the extent possible, the schedule for submission of such reports shall be timed to coincide with other periodic reports required by the permit, including the permittee's annual compliance certification.

6.1.3.3.2 Each report submitted under 6.1.3.3.1 of this regulation shall identify any deviations from permit requirements since the previous report, and any deviations from the monitoring, recordkeeping and reporting requirements under the permit.

6.1.3.3.3 In addition to semiannual monitoring reports, each permittee shall be required to submit supplemental reports as follows:

6.1.3.3.3.1 Any deviation resulting from emergency or malfunction conditions as defined in 6.7 of this regulation shall be reported within two working days of the date on which the permittee first becomes aware of the deviation, if the permittee wishes to assert the affirmative defense authorized under 6.7 of this regulation;

6.1.3.3.3.2 Any deviation that poses an imminent and substantial danger to public health, safety, or the environment shall be reported immediately upon discovery and after activating the appropriate site emergency plan;

6.1.3.3.3.3 Any other deviations that are identified in the permit as requiring more frequent reporting than the permittee's semiannual report shall be reported on the schedule specified in the permit;

6.1.3.3.3.4 All reports of deviations from permit conditions shall identify the probable cause of the deviations and any corrective actions or preventative measures taken.

6.1.3.3.3.5 Nothing herein shall relieve the permittee from any reporting requirements under federal, state or local laws.

6.1.3.3.4 Every report submitted under 6.1.3 of this regulation shall be certified by a responsible official, except that if a report of a deviation required under 6.1.3.3.3 of this regulation must be submitted within 10 days of the deviation, the report may be submitted in the first instance without a certification if an appropriate certification is provided within 10 days thereafter, together with any corrected or supplemental information required concerning the deviation.

6.1.3.3.5 A permittee may request confidential treatment for information in any report submitted under 6.1.3 of this regulation pursuant to the limitations and procedures set out in 5.1.4 of this regulation.

6.1.4 Risk Management Plans. If the source is required to develop and register a risk management plan pursuant to section 112(r) of the Act, the permit need only specify that it will comply with the requirement to register such a plan. The content of the risk management plan need not itself be incorporated as a permit term.

6.1.5 Emissions Exceeding Title IV Allowances. The permit shall prohibit emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

6.1.5.1 No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

6.1.5.2 No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

6.1.5.3 Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

6.1.6 Severability Clause. The permit shall include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

6.1.7 General Requirements. The permit shall include provisions stating the following:

6.1.7.1 The permittee must comply with all conditions of the permit. Any noncompliance with the permit constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance or modification, or for denial of a permit renewal application.

6.1.7.2 It shall not be a defense for a 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. However, nothing in 6.1.7 of this regulation shall be construed as precluding consideration of a need to halt or reduce activity as a mitigating factor in assessing penalties for noncompliance if the health, safety, or environmental impacts of halting or reducing operations would be more serious than the impacts of continuing operations.

6.1.7.3 The permit may be modified, revoked, reopened, and reissued, or terminated for cause. Except as provided under 7.5.1 of this regulation for minor permit modifications, the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a modification of planned changes or anticipated noncompliance does not stay any permit condition.

6.1.7.4 The permit does not convey any property rights of any sort, or any exclusive privilege.

6.1.7.5 The permittee shall furnish to the Department, upon receipt of a written request and within a reasonable time, any information that the Department may request to determine whether cause exists to modify, terminate or revoke the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department copies of records required to be kept by the permit. The permittee may make a claim of confidentiality pursuant to 5.1.4 of this regulation for any information or records submitted under 6.1.7 of this regulation.

6.1.8 Fees. The permit shall provide that the permittee will pay fees to the Department consistent with the fee schedule established from time to time by the Delaware General Assembly.

6.1.9 Emissions Trading. The permit shall provide that no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

6.1.10 Operating Scenarios. The permit shall include terms and conditions applicable to all operating scenarios described in the permit application and eligible for approval under applicable requirements. The permit shall authorize the permittee to make changes among operating scenarios authorized in the permit without notice, but shall require the permittee contemporaneously with making a change from one operating scenario to another to record in a log at the permitted facility the scenario under which it is operating. Each operating scenario shall meet all applicable requirements, and the requirements of this regulation.

6.1.11 Emissions Averaging. The permit shall include terms and conditions, if the permit applicant requests them, for the trading or averaging of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading or averaging such increases and decreases. Such

terms and conditions shall include terms under 6.1 and 6.3 of this regulation to determine compliance and shall satisfy all requirements of the applicable requirements authorizing such trading or averaging.

6.2 Federally Enforceable Requirements

6.2.1 Except as provided in 6.2.2 of this regulation, all terms and conditions in a permit issued under 6.0 of this regulation, including any provisions designed to limit a source's potential to emit, are enforceable by the Department, by EPA, and by citizens under section 304 of the Act.

6.2.2 Notwithstanding 6.2.1 of this regulation, the Department shall designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or any of its applicable requirements, and such terms and conditions shall not be enforceable by EPA and citizens under section 304 of the Act. Terms and conditions so designated shall not be subject to the requirements of 7.0 and 8.0 of this regulation or of 40 CFR Part 70. Terms and conditions designated under 6.2 of this regulation may be included in an addendum to the source's permit.

6.3 Compliance Requirements. All permits issued under this regulation shall contain the following elements with respect to compliance:

6.3.1 Consistent with 6.1.3 of this regulation, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit under this regulation shall contain a certification by a responsible official that meets the requirements of 5.6 of this regulation.

6.3.2 Inspection and entry requirements that require that, upon presentation of identification, the permittee shall allow authorized officials of the Department to perform the following:

6.3.2.1 Enter upon the permittee's premises where a source is located or emissions-related activity is conducted, or where records that must be kept under the conditions of the permit may be located;

6.3.2.2 Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

6.3.2.3 Inspect at reasonable times and using reasonable safety practices any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

6.3.2.4 As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

6.3.3 A schedule of compliance to the extent required under 5.4.8.3 of this regulation.

6.3.4 To the extent required under an applicable schedule of compliance and 5.4.8 of this regulation, progress reports, to be submitted at least semiannually, or more frequently if specified in the applicable requirement or by the Department. Such progress reports shall contain the following:

6.3.4.1 Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

6.3.4.2 An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

6.3.5 Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Each permit shall specify:

6.3.5.1 The frequency (which shall be annually unless the applicable requirement or the Department specifies submission more frequently) of submissions of compliance certifications;

6.3.5.2 In accordance with 6.1.3 of this regulation, a means for monitoring the compliance of the source with emissions limitations, standards, and work practices contained in applicable requirements;

6.3.5.3 A requirement that the compliance certification include the following:

6.3.5.3.1 The identification of each term or condition of the permit that is the basis of the certification;

6.3.5.3.2 The permittee's current compliance status, as shown by monitoring data and other information reasonably available to the permittee;

6.3.5.3.3 Whether compliance was continuous or intermittent;

6.3.5.3.4 The method or methods used for determining the compliance status of the source, currently and over the reporting period as required by 6.1.3 of this regulation; and

6.3.5.3.5 Such other facts as the Department may require to determine the compliance status of the source;

6.3.5.4 A requirement that all compliance certifications be submitted to EPA as well as to the Department;

6.3.5.5 Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act; and

6.3.5.6 Such other provisions as the Department may require.

6.4 Source Category Permits

6.4.1 The Department may establish source categories that it concludes are appropriate for source category permits, and any source may petition the Department to establish a source category. The Department may identify a category of sources if it finds that:

6.4.1.1 There are several permittees, permit applicants or potential permit applicants who have the same or substantially similar operations, emissions, activities or facilities;

6.4.1.2 The permittees, permit applicants or potential permit applicants emit the same types of regulated air pollutants;

6.4.1.3 The operations, emissions, activities or facilities are subject to the same or similar standards, limitations and operating requirements; and

6.4.1.4 The operations, emissions, activities or facilities are subject to the same or similar monitoring requirements.

6.4.2 Source Category Permits may be issued for the following purposes:

6.4.2.1 To establish terms and conditions to implement applicable requirements for a source category;

6.4.2.2 To establish terms and conditions to implement applicable requirements for specified categories of changes to permitted sources; and

6.4.2.3 To establish federally-enforceable caps on emissions from sources in the specified category.

6.4.3 No source category permit may be issued for affected sources under the acid rain program unless otherwise provided in regulations promulgated under Title IV of the Act.

6.4.4 For each source category identified, the Department may, after public notice and hearing conducted in accordance with the procedures specified in 7.10 of this regulation, adopt source category requirements

including, but not limited to, emission limitations and standards, monitoring and related recordkeeping and reporting requirements, and fees, and criteria by which sources may qualify for source category permits.

6.4.5 After a source category has been established, any qualifying source may submit a source category application.

6.4.5.1 A source category application shall identify the source and provide information sufficient to demonstrate that it falls within the identified source category, together with any additional information that may be specified by the Department;

6.4.5.2 The Department shall act to approve or deny the application within 120 days of receipt; and

6.4.5.3 A final action approving or denying a source category application shall be subject to judicial review.

6.4.6 A source category permit issued under 6.0 of this regulation may provide that the source shall be entitled to the protection of the permit shield for all operations, activities and emissions addressed by the source category permit unless and to the extent that it is subsequently determined that the source does not qualify for the terms and conditions of the source category permit.

6.4.7 If some but not all of a source's operations, activities and emissions are eligible for coverage under one or more source categories, the source may apply for and receive coverage under the source category permits for the operations, activities and emissions that are so eligible. If the source is required under 3.0 of this regulation to obtain a permit addressing the remainder of its operations, activities and emissions, it may apply for and receive a permit that addresses specifically only those items not covered by the source category permits. In such a case, the source's permit shall identify all operations, activities and emissions that are subject to source category permits and incorporate those source category permits by reference. Unless the permit specifically states otherwise, the terms and conditions of any source category permits incorporated by reference shall apply.

6.5 Temporary Sources. The Department may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

6.5.1 Conditions that will assure compliance with all applicable requirements at all authorized locations;

6.5.2 Requirements that the owner or operator notify the permitting authority at least 45 days in advance of each change in location;

6.5.3 The proposed change in location shall be subject to public comment and judicial review; and

6.5.4 Conditions that assure compliance with all other provisions of 6.0 of this regulation.

6.6 Permit Shield

6.6.1 Except as provided in this regulation, a source may request that the Department include in the Part 70 permit a provision stating that compliance with the terms and conditions of the permit shall constitute compliance with any applicable requirement specifically identified in the permit as of the day of permit issuance.

6.6.2 The Department may deny, in whole or in part, a permit shield requested pursuant to 6.6.1 of this regulation. Should the Department make such a denial, it shall identify the portion or portions of the permit to receive the permit shield and the portion or portions denied the permit shield, and shall set-forth the basis for denial.

6.6.3 A Part 70 permit that does not expressly provide a permit shield shall be presumed not to provide such a shield.

6.6.4 Nothing in 6.6 of this regulation shall in any way limit or affect the following:

6.6.4.1 The provisions of section 303 (Emergency Orders) of the Act, including the authority of the Administrator under that section; or

6.6.4.2 The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

6.6.4.3 The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

6.6.4.4 The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

6.7 Emergencies or Malfunctions

6.7.1 Definitions

"Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner, and that causes the source to exceed a technology based emission limitation under the permit, due to unavoidable increases in emissions attributable to the malfunction. An emergency or malfunction shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

6.7.2 Effect of an emergency or malfunction. An emergency or malfunction constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of 6.7.3 of this regulation are met.

6.7.3 The affirmative defense of emergency or malfunction shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

6.7.3.1 An emergency or malfunction occurred and that the permittee can identify the cause or causes of the emergency or malfunction;

6.7.3.2 The permitted facility was at the time being operated in a prudent and professional manner and in compliance with generally accepted industry operations and maintenance procedures;

6.7.3.3 During the period of the emergency or malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

6.7.3.4 The permittee submitted notice of the emergency or malfunction to the Department within two working days of the time when emission limitations were exceeded due to the emergency or malfunction. Such notice must contain a description of the emergency or malfunction, any steps taken to mitigate emissions, and corrective actions taken.

6.7.4 In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency or malfunction has the burden of proof.

6.7.5 The provision of 6.7 of this regulation is in addition to any emergency or malfunction provision contained in any applicable requirement.

6.8 Operational Flexibility. Each permit issued under this regulation shall provide that a permitted facility is expressly authorized to make a section 502(b)(10) (of the Act) change within the facility without a permit revision, if the change is not a modification under any provision of Title I of the Act or the State Implementation Plan (SIP), does not involve a change in compliance schedule dates, and the change does not result in a level of emissions exceeding the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

6.8.1 Before making a change under this provision, the permittee shall provide advance written notice to the Department and to EPA, describing the change to be made, the date on which the change will occur, any changes in emissions, and any permit terms and conditions that are affected, including any new applicable requirements. The permittee shall thereafter maintain a copy of the notice with the permit. The written notice shall be provided to EPA and the Department at least seven - calendar days before the change is to be made, except that this period may be shortened or eliminated as necessary for a change that must be implemented more quickly to address unanticipated conditions posing a significant health, safety, or environmental hazard. If less than seven calendar days notice is provided because of a need to respond more quickly to such unanticipated conditions, the permittee shall provide notice to EPA and the Department as soon as possible after learning of the need to make the change, together with the reason or reasons why advance notice could not be given.

6.8.2 The permit shield provided under 6.6 of this regulation shall not apply to changes made under 6.0 of this regulation.

6.8.3 Upon the request of a permit applicant, the Department shall issue a permit that contains terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that assure that the emissions trades are quantifiable and enforceable and comply with all applicable requirements and 6.1 and 6.3 of this regulation. Under 6.8.3 of this regulation, the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

12/11/2000

7.0 Permit Issuance, Renewal, Reopenings, And Revisions

7.1 Action on Application

7.1.1 A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

7.1.1.1 The Department has received a complete application for a permit, permit modification, or permit renewal;

7.1.1.2 The Department has complied with the requirements for public participation under 7.10 of this regulation;

7.1.1.3 The Department has complied with the requirements for notifying and responding to affected states under 8.1 of this regulation;

7.1.1.4 The Department finds that the conditions of the permit provide for compliance with all applicable requirements and the requirements of this regulation; and

7.1.1.5 EPA has received a copy of the proposed permit and any notices required under 8.2 of this regulation, and has not objected to issuance of the permit under 40 CFR, section 70.8(c) within the time specified therein.

7.1.2 Following review of an application submitted in accordance with this regulation, the Department shall either deny the application and state the reasons for doing so, or issue for public notice a draft permit, permit modification, or renewal in accordance with 7.10 of this regulation. The draft shall be accompanied by a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Department shall send this statement to EPA, to affected states, to any person who requests it, and to the applicant.

7.1.3 Following completion of the public notice period, if no hearing is held, the Department shall either deny the application and state the reasons for doing so, or prepare and submit to EPA a proposed permit, permit modification, or renewal. If a public hearing is held, the Secretary of the Department shall issue an Order in accordance with 7 **Del.C.** Ch 60, §6006, either denying the application and stating the reasons for doing so, or prepare and submit to EPA a proposed permit, permit modification, or renewal.

7.1.4 Action Following EPA Review

7.1.4.1 Upon receipt of notice from EPA that it will not object to a proposed permit, permit modification, or permit renewal that has been submitted for EPA review pursuant to 7.0 of this regulation, the Department shall issue the permit, permit modification, or permit renewal forthwith.

7.4.1.2 Upon the passage of 45 days after submission of a proposed or revised proposed permit, permit modification, or permit renewal for EPA review and, if EPA has not notified the Department that it objects to the proposed permit action, the Department shall issue the permit, permit modification, or renewal forthwith.

7.1.4.3 If EPA objects to the proposed permit, the Department shall not issue the permit as proposed, but shall consult with EPA, and the applicant and shall submit a revised proposed permit to EPA, unless the Department's decision is to deny the permit.

7.1.5 Except as provided in 7.1.5.1 or 7.1.5.2 of this regulation, the Department shall take final action on each application for a permit within 18 months after receiving a complete application. Final action on each application for a permit modification shall be taken within 12 months after receipt of a complete application. Final action on each application for a permit renewal shall be taken within one year after receipt of a complete application. For each such application, the Department shall either deny the application or submit a proposed permit, modification or renewal to EPA.

7.1.5.1 The Department shall take final action on at least one third of all initial permit applications (as defined in 5.1.1.1 of this regulation) annually during the first three years following final approval of the State program by EPA.

7.1.5.2 The Department shall take action on any permit, permit modification, or renewal issued in compliance with regulations promulgated under Title IV or V of the Act for the permitting of affected sources under the acid rain program within the time specified in those regulations.

7.1.6 To the extent feasible, applications shall be acted upon in the order received, except that:

7.1.6.1 Priority shall be given to taking final action on applications for construction or modification under Title I, Parts C and D of the Act.

7.1.6.2 For processing purposes, the Department may group together applications addressing any group of similar sources.

7.1.6.3 The Department may give expedited treatment to simple applications that do not require significant review (e.g., permits incorporating few or no substantive regulatory requirements).

7.1.6.4 A source may submit a request for expedited processing of any application submitted under this regulation. Any such request shall include a statement of reasons and shall identify the date by which final action is requested, taking into account the time, if any, required for public and affected state comment and EPA review. In reviewing such a request, the Department shall consider, among other relevant factors, the reasons for expedited treatment stated by the applicant, the complexity of the permit action at issue, and the availability of Department staff and resources. The Department shall inform the applicant within 60 days of receipt of a request for expedited treatment whether that request has been granted, granted in part, or denied. A decision regarding expedited processing shall not be subject to review.

7.1.6.5 The Department may give expedited treatment to an application if the source certifies that early approval of the application is required to enable it to comply with applicable requirements. In submitting a certification requesting expedited treatment, the source shall explain why early approval is required for compliance with applicable requirements and identify the date by which final approval is requested.

7.2 Requirement for a Permit. Except as provided in 7.2.1 and 7.2.2 of this regulation, no covered source may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under this regulation.

7.2.1 If a covered source submits a timely and complete application for permit issuance or renewal, that source's failure to have a permit shall not be a violation of the requirement to have such a permit until the Department takes final action on the application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to 5.1.2 of this regulation, the applicant fails to submit by the deadline specified in writing by the Department any additional information identified as being reasonably required to process the application.

7.2.2 If a covered source files a timely application that the Department determines to be incomplete, the source's failure to have a permit may be deemed a violation of this regulation until such time as the deficiency is cured.

7.2.3 The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under Title I of the Act.

7.3 Permit Renewal and Expiration

7.3.1 Applications for permit renewal shall be subject to the same procedural requirements, including those for public participation, affected state comment, and EPA review, that apply to initial permit issuance under 7.1 of this regulation, except that an application for permit renewal may address only those portions of the permit that the Department determines require revision, supplementing, or deletion, incorporating the remaining permit terms by reference from the previous permit. The Department may similarly, in issuing a draft renewal permit or proposed renewal permit, specify only those portions that will be revised, supplemented, or deleted, incorporating the remaining permit terms by reference.

7.3.2 A source's right to operate shall terminate upon the expiration of its permit, unless a timely and complete renewal application has been submitted at least six months before the date of expiration or such earlier date as the Department may specify in the permit.

7.3.3 If a timely and complete application for a permit renewal is submitted, but the Department fails to take final action to issue or deny the renewal permit before the end of the term of the previous permit, then the permit shall not expire until the renewal permit has been issued or denied, and any permit shield granted for the permit shall continue in effect during that time.

7.4 Administrative Permit Amendments

7.4.1 An "administrative permit amendment" is a permit revision that:

7.4.1.1 Corrects typographical errors;

7.4.1.2 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;

7.4.1.3 Requires more frequent monitoring or reporting by the permittee;

7.4.1.4 Allows for a change in ownership or operational control of a source where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;

7.4.1.5 Incorporates into the permit the requirements from preconstruction review permits issued by the Department under 7 **DE Admin. Code** 1102 or 7 **DE Admin. Code** 1125, when such permits were issued meeting the requirements of 11.2.10, 11.5, 12.4, 12.5 and 12.6 of 7 **DE Admin. Code** 1102.

7.4.2 Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

7.4.3 Administrative Permit Amendment Procedures. An administrative permit amendment shall be made by the Department in accord with the following:

7.4.3.1 The Department shall take final action on a request for an administrative permit amendment within 60 days from the date of receipt of such a request, and may incorporate the proposed changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to 7.4 of this regulation.

7.4.3.2 The Department shall submit a copy of the revised permit to the Administrator.

7.4.3.3 The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

7.4.4 The Department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in 6.6 of this regulation for administrative permit amendments made pursuant to 7.4.1.5 of this regulation.

7.5 Permit Modification. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under 7.4 of this regulation. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

7.5.1 Minor Permit Modification Procedures

7.5.1.1 Criteria.

7.5.1.1.1 Minor permit modification procedures may be used only for those permit modifications that:

7.5.1.1.1.1 Do not violate any applicable requirement;

7.5.1.1.1.2 Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;

7.5.1.1.1.3 Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

7.5.1.1.1.4 Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject, or do not seek to establish or change compliance schedule dates. Such terms and conditions include:

7.5.1.1.1.4.1 A federally-enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Act; and

7.5.1.1.1.4.2 An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act;

7.5.1.1.1.5 Are not modifications under any provision of Title I of the Act; and

7.5.1.1.1.6 Are not required by this regulation to be processed as a significant modification.

7.5.1.1.2 Notwithstanding 7.5.2.1.1 and 7.5.3.1 of this regulation, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the Delaware State Implementation Plan, or in applicable requirements promulgated by EPA.

7.5.1.2 Application. To use the minor permit modification procedures, a source shall submit an application requesting such use which shall meet the basic permit application requirements under this regulation and shall include the following:

7.5.1.2.1 A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

7.5.1.2.2 The source's suggested draft permit;

7.5.1.2.3 Certification by a responsible official, consistent with 5.6 of this regulation, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

7.5.1.2.4 Completed forms for the Department to use to notify EPA and affected states as required under 8.0 of this regulation.

7.5.1.3 EPA and Affected State Notification. Within five working days of receipt of a minor permit modification application, the Department shall notify EPA and affected states of the requested permit modification. The Department shall promptly send any notice required under 8.1.2 of this regulation to EPA.

7.5.1.4 Timetable for Issuance. The Department will not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Department that EPA will not object to issuance of the permit modification, whichever occurs first, although the Department can approve the permit modification prior to that time. Within 90 days of the Department's receipt of an application under the minor permit modification procedures or 15 days after the end of EPA's 45-day review period under 8.2 of this regulation, whichever is later, the Department shall:

7.5.1.4.1 Issue the permit modification as proposed;

7.5.1.4.2 Deny the permit modification application;

7.5.1.4.3 Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

7.5.1.4.4 Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by 40 CFR Part 70.8(a).

7.5.1.5 Source's Ability to Make Change. Immediately after filing an application meeting the requirements of these minor permit modification procedures, the source is authorized to make the change or changes proposed in the application. After the source makes the change allowed by the preceding sentence, and until the Department takes any of the actions specified in 7.5.1.4.1 through 7.5.1.4.4 of this regulation, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this period, the source need not comply with the existing terms and conditions it seeks to modify; however, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions may be enforced against it.

7.5.1.6 Permit Shield. The permit shield under 6.6 of this regulation shall not extend to minor permit modifications.

7.5.1.7 Public Notice. The provisions of 7.10 of this regulation shall apply to minor permit modifications.

7.5.2 Group Processing of Minor Permit Modifications

Pursuant to 7.5.2 of this regulation, the Department may modify the procedure outlined in 7.5.1 of this regulation to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

7.5.2.1 Criteria. Group processing of modifications may be used only for those permit modifications:

7.5.2.1.1 That meet the criteria for minor permit modification procedures under 7.5.1.1.1 of this regulation; and

7.5.2.1.2 That collectively are below the following threshold level: 10% of the emissions allowable under the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source, or five tons per year, whichever is least.

7.5.2.2 Application. An application requesting the use of group processing procedures shall meet the requirements of 5.4 of this regulation and shall include the following:

7.5.2.2.1 A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

7.5.2.2.2 The source's suggested draft permit.

7.5.2.2.3 Certification by a responsible official, consistent with 5.6 of this regulation, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

7.5.2.2.4 A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under 7.5.2.1.2 of this regulation.

7.5.2.2.5 Certification, consistent with 5.6 of this regulation, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

7.5.2.2.6 Completed forms for the Department to use to notify the Administrator and affected states as required under 8.0 of this regulation.

7.5.2.3 EPA and Affected State Notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under 7.5.2.1.2 of this regulation, whichever is earlier, the Department promptly shall notify the Administrator and affected states of the requested permit modifications. The Department shall send any notice required under 8.1.2 of this regulation to the Administrator.

7.5.2.4 Timetable for Issuance. The provisions of 7.5.1.4 of this regulation shall apply to modifications eligible for group processing, except that the Department shall take one of the actions specified in 7.5.1.4.1 through 7.5.1.4.4 of this regulation within 180 days of receipt of the application or 15 days after the end of the Administrator's 45-day review period under 8.2 of this regulation, whichever is later.

7.5.2.5 Source's Ability to Make Change. The provisions of 7.5.1.5 of this regulation shall apply to modifications eligible for group processing.

7.5.2.6 Permit Shield. The permit shield under 6.6 of this regulation shall not extend to modifications eligible for group processing.

7.5.2.7 Public Notice. The provisions of 7.10 of this regulation shall apply to modifications eligible for group processing.

7.5.3 Significant Modification Procedures

7.5.3.1 Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or administrative amendments, or that:

7.5.3.1.1 Involve a significant change in existing monitoring permit terms or conditions, or constitute a relaxation of reporting or recordkeeping permit terms or conditions;

7.5.3.1.2 Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

7.5.3.1.3 Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to:

7.5.3.1.3.1 A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I;

7.5.3.1.3.2 An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act; and

7.5.3.1.4 Are modifications under any provision of Title I of the Act, except those that qualify for processing as administrative permit amendments under 7.4 of this regulation.

7.5.3.2 Nothing herein shall be construed to preclude the permittee from making changes consistent with this regulation that would render existing permit compliance terms and conditions irrelevant.

7.5.3.3 Procedures for processing. Significant permit modifications shall meet all requirements of this regulation that are applicable to permit issuance and renewal, including those for applications, public participation, review by affected states, and review by EPA. The application for the modification shall describe the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs. The Department shall complete

review on the majority of significant permit modifications within nine months after receipt of a complete application.

7.6 Reopening for Cause

7.6.1 A permit shall be reopened for cause if:

7.6.1.1 The Department or EPA determines that the permit contains a material mistake or that the emissions standards or other terms of the permit were based on inaccurate information;

7.6.1.2 Additional applicable requirements under the Act become applicable to the source if:

7.6.1.2.1 The source is a major source;

7.6.1.2.2 The permit has a remaining term of more than three years; or

7.6.1.2.3 The effective date of the requirement is earlier than the date on which the permit is due to expire. However, if the original permit or any of its terms and conditions has been extended pursuant to 7.3.3 of this regulation, the Department may require the source to revise the permit renewal application to incorporate additional applicable requirements.

7.6.1.3 The source is an affected source under the acid rain program and additional requirements (including excess emissions requirements) become applicable to that source. Upon approval by EPA excess emissions offset plans shall be deemed to be incorporated into the permit; or

7.6.1.4 The Department or EPA determines that the permit must be revised to assure compliance by the source with applicable requirements.

7.6.2 If the Department finds reason to believe that a permit should be reopened for cause, it shall provide at least 30 days prior written notice to that effect to the source, except the notice period can be shorter if the Department finds that an emergency exists.

7.6.2.1 Such notice shall include a statement of the terms and conditions that the Department proposes to change, delete, or add to the permit. If the Department does not have sufficient information to determine the terms and conditions that must be changed, deleted, or added to the permit, the notice shall request the source to provide that information within a period of time specified in the notice, which shall be not less than 30 days except in the case of an emergency.

7.6.2.2 The Department shall give the source an opportunity to provide evidence that the permit should not be reopened.

7.6.3 In reissuing the permit, the Department shall follow the procedures established under 7.1 and 7.10 of this regulation. The source shall in all cases be afforded an opportunity to comment on the revised permit terms.

7.6.4 Any reopening under 7.6.1.2 of this regulation shall be completed within 18 months after promulgation of the applicable requirements.

7.7 Reopening for Cause by EPA

7.7.1 If the Department receives a notice from EPA that the Administrator has found that cause exists to terminate, modify, or revoke and reissue a permit, the Department shall, within 14 days after receipt of such notification, provide notice to the source. The notice to the source shall include a copy of the notice from EPA and invite the source to comment in writing on the proposed action or request a hearing.

7.7.2 Within 90 days following receipt of the notification from EPA, the Department shall issue and forward to EPA a proposed determination of termination, modification or revocation and reissuance, as appropriate.

The Department may request additional time, up to 90 days, for this submission pursuant to EPA's Part 70 regulations if such time is required to obtain a new or revised permit application or other information from the source.

7.7.3 The EPA will review the proposed determination from the Department within 90 days of receipt.

7.7.4 The Department shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify or revoke and reissue the permit in accordance with the Administrator's objection.

7.7.5 If the Department fails to submit a proposed determination pursuant to 7.7.2 of this regulation, or fails to resolve any objection pursuant to 7.7.4 of this regulation, the Administrator will terminate, modify or revoke and reissue the permit after taking the following actions:

7.7.5.1 Providing at least 30 days' notice to the permittee, in writing, of the reasons for any such action. This notice may be given during the procedures in 7.7.1 through 7.7.4 of this regulation; and

7.7.5.2 Providing the permittee an opportunity for comment on the Administrator's proposed action, and an opportunity for a hearing.

7.8 Revocations and Terminations

7.8.1 The Department may revoke a permit upon the request of the permittee or for cause. Cause for revocation includes, but is not limited to:

7.8.1.1 A pattern of unresolved noncompliance at the permitted facility with the terms and conditions of the permit and the permittee has refused to undertake appropriate action (such as a schedule of compliance) to resolve the noncompliance;

7.8.1.2 The permittee has failed to disclose material facts relevant to issuance of the permit or has submitted false or misleading information to the Department;

7.8.1.3 The Department finds that the permitted facility or activity substantially endangers public health, safety, or the environment, and that the danger cannot be removed by a modification of the terms of the permit;

7.8.1.4 The permittee has failed to pay permit fees as established from time to time by the Delaware General Assembly; or

7.8.1.5 The permittee has failed to pay a civil or criminal penalty imposed for violations of the permit.

7.8.2 Upon finding that cause exists for revocation of a permit, the Department shall notify the permittee of that finding in writing, stating the reasons for the proposed revocation. Within 30 days following receipt of that notice, the permittee may submit written comments concerning the proposed revocation and may request a hearing. If the Department thereafter makes a final determination to revoke the permit, it shall provide a written notice to the permittee specifying the reasons for the decision and the effective date of the revocation.

7.8.3 A revocation issued under 7.0 of this regulation may be issued conditionally with a future effective date and may specify that the revocation will not take effect if the permittee satisfies the specified conditions before the effective date.

7.8.4 A permittee may at any time apply for termination of all or a portion of its permit relating solely to operations, activities, and emissions that have been permanently discontinued at the permitted facility. An application for termination shall identify with specificity the permit or permit terms that relate to the discontinued operations, activities, and emissions. The Department shall act on an application for termination on this ground within 90 days of receipt and shall grant the application for termination upon

finding that the permit terms for which termination is sought relate solely to operations, activities, and emissions that have been permanently discontinued. In terminating all or portions of a permit pursuant to 7.8 of this regulation, the Department may make appropriate orders for the submission of a final report or other information from the source to verify the complete discontinuation of the relevant operations, activities, and emissions.

7.8.5 A source may apply for termination of its permit on the ground that its operations, activities, and emissions are fully covered by a source category permit for which it has applied and received pursuant to 6.4 of this regulation. The Department shall act on an application for termination on this ground within 90 days of receipt and shall grant the application upon a finding that the source's operations, activities, and emissions are fully covered by a source category permit.

7.8.6 A source that has received a final revocation or termination of its permit may apply for a new permit under the procedures established in 5.0 of this regulation.

7.9 Case-by-Case Determinations. If applicable requirements require the Department to make a case-by-case determination of an emission standard, technology requirement, work practice standard, or other requirement for a source and to include terms and conditions implementing that determination in the source's permit, the source shall include in its permit application under 5.0 of this regulation a proposed determination, together with the data and other information upon which the determination is to be based and proposed terms and conditions to implement the determination. Upon receipt of a request from the source, the Department shall meet with the source before the permit application is submitted to discuss the determination and the information required to make it. In the event that the Department determines that the source's proposed determination and implementing terms and conditions should be revised in the draft permit, the proposed permit, or the final permit, the Department shall in all cases inform the source of the changes to be made and allow the source to comment on those changes before issuing the draft permit, proposed permit, or final permit.

7.10 Public participation. All permit proceedings, including initial permit issuance, permit modifications, and renewals, shall be conducted in accordance with the procedures for public participation specified below.

7.10.1 After receipt of an application for a permit, permit modification, or permit renewal, and no later than 61 days before the deadline under 7.1.5 of this regulation for issuance of a proposed permit, modification, or renewal for EPA review, the Department shall issue a draft permit and solicit comment from the applicant, affected states, and the public as follows:

7.10.1.1 The Department shall provide notice to the public in accordance with 7 **Del.C.** Ch 60, §6004, by:

7.10.1.1.1 Making available in at least one location in the area in which the facility is located a public file containing copy of all materials that the applicant has submitted (other than those granted confidential treatment under 5.1.4 of this regulation), a copy of the preliminary determination and draft permit or permit renewal, and a copy or summary of other materials, if any, considered in making the preliminary determination; or

7.10.1.1.2 Publishing a public notice in accordance with 7 **Del.C.** Ch 60, §6004, which requires a minimum 15-day public comment period.

7.10.1.2 Copies of the notice required under 7.10.1.1 of this regulation shall be sent to the representatives of affected states designated by those states to receive such notices.

7.10.1.3 Copies shall also be sent by mail to any person who has requested such notification from the Department by providing the name and mailing address.

7.10.2 The public notice shall establish a period of not less than 30 days in accordance with 40 CFR Part 70.7(h) following publication of the notice for the submission of written comments and hearing requests, and shall identify the affected facility, the name and address of the applicant or permittee, the name, address and telephone number of a Department representative with responsibility for the permitting action, the activity or activities involved in the permit action, the emissions change involved in any permit modification, the

time and place of the hearing or a statement of procedures to request a hearing, and the location of the public file.

7.10.3 The Department shall hold a hearing on the draft permit or permit renewal if the Secretary receives a meritorious request for a hearing within a reasonable time, as stated in the advertisement. A public hearing may be held on any application if the Secretary deems it to be in the best interest of the State to do so. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

7.10.4 Any public hearing held under 7.0 of this regulation shall be held no earlier than the 31st day following publication of a public notice that a public hearing will be held, and of the time and place that hearing will be held.

7.10.5 The Department may limit participation at the public hearing to issues raised in written comments submitted during the public comment period. The officer conducting the hearing may, as appropriate, impose additional limitations, including time restrictions.

7.10.6 The applicant shall be afforded an opportunity to submit, within 15 days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made.

7.10.7 The Department shall consider all comments submitted by the applicant, the public, and affected states in reaching its final determination and issuing the proposed permit, modification, or renewal for EPA review. The Department shall maintain a list of all commenters and a summary of the issues raised and shall make that information available in the public file and supply it to EPA upon request.

7.10.8 At the time it issues a proposed permit, modification, or renewal for EPA review, the Department shall issue a written response to all comments submitted by affected states and all significant comments submitted by the applicant and the public.

7.10.9 The initial establishment of a source category shall follow the procedures detailed in 7.10.1 through 7.10.8 of this regulation. Once a source category has been established, however, the public notice requirement for each subsequent source category permit application from a qualifying source shall be in accordance with 7 **Del.C.** Ch 60, §6004.

7.11 Judicial Review. Judicial review shall be in accordance with 7 **Del.C.** Ch 60, §6008 and §6009. The deadlines established in 7.0 of this regulation shall not apply in the event of judicial review. Failure of the Department to take timely action under 7.1.5, 7.4.3, 7.5.1.4, 7.5.2.4 and 7.5.3.3 of this regulation shall constitute final agency action, and be subject to judicial review.

11/15/1993

8.0 Permit Review by EPA and Affected States

8.1 Review by Affected States

8.1.1 The Department shall give notice of each draft permit to all affected states on or before the time that the Department provides this notice to the public under 7.10 of this regulation, except to the extent 7.5.1 or 7.5.2 of this regulation requires the timing of the notice to be different.

8.1.2 As part of the Department's submittal of a proposed permit to the Administrator (or as soon as possible after the submittal for minor permit modification procedures under 7.5.1 or 7.5.2 of this regulation), the Department shall notify the Administrator and any affected state in writing of any refusal by the Department to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice will include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable requirements or the requirements of this regulation.

8.1.3 The Department shall follow the procedures detailed 8.1.1 and 8.1.2 of this regulation, for the initial establishment of a source category. Upon acceptance of the initial draft source category by the Administrator and all affected states, subsequent source category permits may be issued to qualifying source or sources without further EPA or affected state review.

8.2 EPA Objection

8.2.1 No permit for which an application must be transmitted to the Administrator shall be issued, if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

8.2.2 Any EPA objection under 8.2.1 of this regulation shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator will provide the permit applicant a copy of the objection.

8.2.3 Failure of the Department to do any of the following also shall constitute grounds for an objection:

8.2.3.1 Comply with 8.1 of this regulation;

8.2.3.2 Submit any information necessary to review adequately the proposed permit; or

8.2.3.3 Process the permit under the procedures approved to meet 7.10 of this regulation.

8.2.4 If the Department fails, within 90 days after the date of an objection under 8.2.1 of this regulation, to revise and submit a proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of 40 CFR Part 71 regulations.

8.3 Public Petitions to the Administrator. If the Administrator does not object in writing under 8.2 of this regulation, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit raised with reasonable specificity during the public comment period provided for in 7.10 of this regulation, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under 8.0 of this regulation, the Department shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Department has issued a permit prior to receipt of an EPA objection under 8.0 of this regulation, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the time limits established in 40 CFR 70.7(g)(4) or 5(i) and (ii), except in emergencies, and the Department may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

8.4 Transmission of Information to the Administrator

8.4.1 Unless the Administrator waives this requirement, the Department shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final Part 70 permit. The Department may require the applicant to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the Department may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information will be provided in computer-readable format compatible with EPA's national database management system.

8.4.2 The Department will keep for five years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this regulation.

11/15/1993

9.0 Permit Fees

Covered sources shall pay fees as established from time to time by the Delaware General Assembly.

4 DE Reg. 1018 (12/01/00)
7 DE Reg. 1573 (05/01/04)

APPENDIX A: INSIGNIFICANT ACTIVITIES

Any information called-for by the permit application in 5.4 of this regulation need not be submitted for the activities and emissions levels described in this appendix; however, the source must provide a list of any such activities that are excluded because of size, emissions rate, or production rate. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement. The emissions from the activities described in this appendix shall be included when determining the applicability of any applicable requirement.

1.0 Air contaminant detector, air contaminant recorder, combustion controller or combustion shut-off.

2.0 Fuel-burning equipment which:

2.1 Uses any fuel and has a rated heat input of less than 15 million BTU per hour; or

2.2 Is an internal combustion engine which drives compressors, generators, water pumps or other auxiliary equipment during emergency or standby operations.

3.0 Air conditioning or comfort ventilating systems.

4.0 Vacuum cleaning systems used exclusively for office applications or residential housekeeping.

5.0 Ventilating or exhaust systems for print storage room cabinets.

6.0 Exhaust systems for controlling steam and heat.

7.0 Any equipment at a facility used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance, provided the operation of the equipment is not an integral part of the production process and the total actual emissions from all such equipment at the facility do not exceed 204 kilograms (kg) (450 pounds [lb]) in any calendar month.

8.0 Internal combustion engines and vehicles used for transport of passengers or freight, except as may be provided in subsequent regulations.

9.0 Emission units for which an applicable requirement has not yet been promulgated, are not elsewhere listed as an insignificant activity and which have the potential to emit in the aggregate the following air contaminants at less than the specified rates:

VOC 25 tpy in New Castle or Kent Counties or 50 tpy in Sussex County;

Particulate 40 tpy;

PM_{10} 15 tpy;

SO_2 40 tpy; and

NOx 25 tpy in New Castle or Kent Counties or 100 tpy in Sussex County.

10.0 Maintenance, repair or replacement-in-kind of equipment for which a permit to operate has been issued.

11.0 Equipment which emits only elemental nitrogen, oxygen, carbon dioxide ~~and/~~or water vapor.

12.0 Ventilating or exhaust systems used in eating establishments where food is prepared for the purpose of consumption.

13.0 Equipment used to liquify or separate oxygen, nitrogen or the rare gases from the air.

14.0 Fireworks displays.

15.0 Smudge pots for orchards or small outdoor heating devices to prevent the freezing of plants.

16.0 Outdoor painting and sandblasting equipment.

17.0 Lawn mowers, tractors, farm equipment and construction equipment.

18.0 Fireplaces for the burning of wood and paper.

19.0 Any activity related to routine maintenance and repair of a facility where emissions would not be associated with a primary production process of the facility. Such activities may include:

19.1 Cleaning;

19.2 Solvent Use;

19.3 Steam Cleaning;

19.4 Painting;

19.5 Degreasing;

19.6 Washing;

19.7 Welding;

19.8 Vacuuming;

19.9 Coating;

19.10 Sweeping;

19.11 Abrasive Use; and

19.12 Insulation Removal.

20.0 Fire schools or fire fighting training.

21.0 Buildings, cabinets, and facilities used for storage of chemicals in closed containers, unless subject to applicable requirements.

22.0 Gasoline storage tanks that:

22.1 have a capacity less than 550 gallons and that are used exclusively for the fueling of implements of husbandry; or

22.2 have a capacity less than 2000 gallons and that were constructed prior to January 1, 1979; or

22.3 have a capacity less than 250 gallons and that were constructed after December 31, 1978.

23.0 Diesel and fuel oil storage tanks with a capacity of 40,000 gallons or less.

24.0 Gasoline and diesel fuel dispensing systems that never exceed a monthly throughput of 10,000 gallons.

25.0 Kilns used for firing ceramic ware if

25.1 heated exclusively by natural gas, electricity, ~~and/~~or liquid petroleum gas, and

25.2 the BTU input is less than 15 mmBTU per hour.

26.0 Inorganic acid storage tanks equipped with an emission control device.

27.0 Sewage treatment facilities.

28.0 Water treatment units.

29.0 Quiescent wastewater treatment operations.

30.0 Non-contact water cooling towers (water that has not been in direct contact with process fluids).

31.0 Laundry dryers, extractors, or tumblers used for fabrics cleaned with a water solution of bleach or detergents.

32.0 Equipment used for hydraulic or hydrostatic testing.

33.0 Blueprint copiers and photographic processes.