

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)
7 DE Admin. Code 1125, 1130

FINAL

1125 Requirements for Preconstruction Review 1130 Title V State Operating Permit Program

Secretary's Order No.: 2010-A-0040

Date of Issuance: November 17, 2010

Effective Date of the Amendment: December 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulatory amendments to 7 DE Admin. Code 1125, Requirements for Preconstruction Review, Section 3.0, "Prevention of Significant Deterioration of Air Quality" and 7 DE Admin. Code 1130, Title V State Operating Permit Program, Section 2.0, "Definitions": **Greenhouse Gas (GHG) Emissions**, to enable Delaware to conform to the requirements of a recent federal rule, 75 FR 31514, "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (June 3, 2010), providing for the regulation of certain greenhouse gases, which are considered pollutants under existing Delaware air quality regulations.

The Department is proposing to amend existing Regulations 1125 and 1130 by adding definitions which describe greenhouse gases (GHG) as composed of the aggregate group of six greenhouse gases: carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF₆), as well as for carbon dioxide equivalent emissions (CO₂e). These regulations also will be amended to require consideration for permitting of certain GHG emitting sources, under Title V (Reg. 1130) and new source review (Reg. 1125), beginning January 2, 2011, that emit or have the potential to emit, 75,000 tons per year, or, 100,000 tons per year of CO₂e. The Department is proposing to make these revisions now to add the new threshold limits for regulating these emissions in these regulations as shown in the recently issued federal rule 75 FR 31514, "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule", as noted above.

On August 31, 2010, the Department's Division of Air Quality (DAQ) commenced the regulatory development process with Start Action Notice 2010-19. The Department published the proposed regulatory amendments in the October 1, 2010 *Delaware Register of Regulations* and held a public hearing on November 10, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 12, 2010 (Report). The Report recommends certain findings and the adoption of the proposed regulatory amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. The Department received public comments from the regulated community, as noted in the Report, and considered and responded to all timely and relevant public comments in making its determination.

I find that the Department's experts in the Division of DAQ fully developed the record to support adoption of this Amendment. With the adoption of the regulatory amendments to 7 DE Admin. Code 1125, Requirements for

Preconstruction Review, Section 3.0, "Prevention of Significant Deterioration of Air Quality" and 7 DE Admin. Code 1130, Title V State Operating Permit Program, Section 2.0, "Definitions": **Greenhouse Gas (GHG) Emissions**, Delaware will be enabled to conform to the requirements of a recent federal rule, 75 FR 31514, "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (June 3, 2010), providing for the regulation of certain greenhouse gases, which are considered pollutants under existing Delaware air quality regulations. Additionally, these regulations are being amended at this time to require consideration for permitting of certain GHG emitting sources, under Title V (Reg. 1130) and new source review (Reg. 1125), beginning January 2, 2011, that emit or have the potential to emit, 75,000 tons per year, or, 100,000 tons per year of CO₂e.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;
- 3.) The Department held a public hearing on November 10, 2010 on the proposed Amendments in order to consider public comments before making any final decision, and fully considered and responded to all timely and relevant comments received from the regulated community concerning this matter;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments do not reflect any substantive changes from the proposed regulation Amendments as published in the October 1, 2010, *Delaware Register of Regulations*;
- 6.) The recommended Amendments should be adopted as final regulation Amendments because (1) Delaware will be enabled to conform to the requirements of a recent federal rule, 75 FR 31514, "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (June 3, 2010), providing for the regulation of certain greenhouse gases, which are considered pollutants under existing Delaware air quality regulations; (2) consideration will now be required for permitting of certain GHG emitting sources, under Title V (Reg. 1130) and new source review (Reg. 1125), beginning January 2, 2011, that emit or have the potential to emit, 75,000 tons per year, or, 100,000 tons per year of CO₂e; and (3) the regulation amendments are well supported by documents in the record; and that
- 7.) The Department shall submit this Order approving the final regulations to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small (for) Collin P. O'Mara, Secretary

1125 Requirements for Preconstruction Review

~~08/11/2005~~ 12/11/10

1.0 General Provisions

- 1.1 Requirements of this regulation are in addition to any other requirements of the State of Delaware Regulations Governing the Control of Air Pollution.
- 1.2 Any stationary source which will impact an attainment area or an unclassifiable area as designated by the U.S. Environmental Protection Agency (EPA) pursuant to Section 107 of the Clean Air Act Amendments of 1990 (CAA), is subject to the provisions of 3.0 of this regulation, Prevention of Significant Deterioration (PSD).
- 1.3 Any stationary source which will impact a non-attainment area as designated by the EPA pursuant to Section 107 of the CAA is subject to 2.0 of this regulation, Emission Offset Provisions (EOP).
- 1.4 A source may be subject to PSD for one pollutant and to EOP for another pollutant, or may affect both attainment or unclassifiable areas and a non-attainment area for the same pollutant.
- 1.5 Any emission limitation represented by Lowest Achievable Emission Rate (LAER) may be imposed by the Department pursuant to regulations adopted under 2.0 of this regulation herein notwithstanding any emission limit specified elsewhere in 7 **DE Admin. Code** 1100 Regulations Governing the Control of Air Pollution.

- 1.6 Any emission limitation represented by Best Available Control Technology (BACT) may be imposed by the Department pursuant to regulations adopted under 3.0 of this regulation herein notwithstanding any emission limit specified elsewhere in 7 **DE Admin. Code** 1100, Regulations Governing the Control of Air Pollution.
- 1.7 No stationary source shall be constructed unless the applicant can substantiate to the Department that the source will comply with any applicable emission limit or New Source Performance Standard or Emission Standard for a Hazardous Air Pollutant as set forth in 7 **DE Admin. Code** 1100 Regulations Governing the Control of Air Pollution.
- 1.8 Any stationary source that implements, for the purpose of gaining relief from 3.0 of this regulation, by any physical or operational limitation on the capacity of the source to emit a pollutant, including (but not limited to) 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 and the limitation or the effect it would have on emissions is enforceable, notwithstanding any emission limit specified elsewhere in 7 **DE Admin. Code** 1100 Regulations Governing the Control of Air Pollution. If a source petitions the Department for relief from any resulting limitation described above, the source is subject to review under 2.0 and 3.0 of this regulation as though construction had not yet commenced on the source or modification.
- 1.9 Definitions - For the purposes of this regulation

“Actual Emissions” means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with the three subparagraphs below.

- In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
- The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
- For any emissions unit, which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

“Allowable Emissions” means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits, which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

The applicable standards

- as set forth in 7 **DE Admin. Code** 1120 and 1121;
- Other applicable Delaware State Implementation Plan emissions limitations, including those with a future compliance date; or
- The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

“Baseline Area” means any intrastate area (and every part thereof) designated as attainment or unclassifiable in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than one $\mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the baseline date is established.

- Area redesignations cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:
 - Establishes a baseline date, or
 - Is subject to this regulation.

“Baseline Concentration” means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

- The actual emissions representative of sources in existence on the applicable baseline date, except as listed under Exceptions below.
- The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

Exceptions: The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase or increases:

- Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and
- Actual emissions increases and decreases at any stationary source occurring after the baseline date.

“Baseline Date”

- Baseline Date means the earliest date after August 7, 1977, on which the first complete application is submitted by a major stationary source or major modification subject to the requirements of 3.0 of this regulation.
- Baseline date means the earliest date after August 7, 1977, but before the effective date of this regulation, on which the first complete application by a major stationary source or major modification which would have been subject to the requirements of 3.0 of this regulation if application were submitted after the effective date of this regulation.
- The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:
 - The area in which the proposed source or modification would construct is designated as attainment or unclassifiable for the pollutant on the date of its complete application under 1.0 of this regulation; and
 - In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

“Begin Actual Construction” means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

“Best Available Control Technology (BACT)” means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under CAA which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, takes into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 7 DE Admin. Code 1120 and 1121. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

“Building, Structure, Facility, or Installation” means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control).

Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively). For purposes of 2.0 of this regulation, this definition shall apply only to the "Building, Structure or Facility".

"Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

- Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition or modification of an emissions unit) which would result in a change in actual emissions.

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the CAA.

"Enforceable" means any standard, requirement, limitation or condition established by an applicable federal or state regulation or specified in a permit issued or order entered thereunder, or contained in a SIP approved by the Administrator of the U.S. Environmental Protection Agency (EPA), and which can be enforced by the Department and the Administrator of the EPA.

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

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Greenhouse Gases (GHG)" means an air pollutant composed of an aggregate group of six greenhouse gases: carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF₆). For the purposes of this regulation, the term CO₂equivalent emissions (CO₂e) shall represent an amount of GHG emitted, and shall be computed as follows:

- Multiply the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHG by the gases associated global warming potential as shown in Table 1-1 of this regulation.
- Sum the resultant value for each gas to compute a tpy CO₂e

Table 1-1
GLOBAL WARMING POTENTIALS

<u>Name</u>	<u>CAS No.</u>	<u>Chemical formula</u>	<u>Global warming potential (100 yr.)</u>
<u>Carbon dioxide</u>	<u>124-38-9</u>	<u>CO₂</u>	<u>1</u>
<u>Methane</u>	<u>74-82-8</u>	<u>CH₄</u>	<u>21</u>
<u>Nitrous oxide</u>	<u>10024-97-2</u>	<u>N₂O</u>	<u>310</u>
<u>HFC-23</u>	<u>75-46-7</u>	<u>CHF₃</u>	<u>11,700</u>
<u>HFC-32</u>	<u>75-10-5</u>	<u>CH₂F₂</u>	<u>650</u>
<u>HFC-41</u>	<u>593-53-3</u>	<u>CH₃F</u>	<u>150</u>
<u>HFC-125</u>	<u>354-33-6</u>	<u>C₂HF₅</u>	<u>2,800</u>

HFC-134	359-35-3	C ₂ H ₂ F ₄	1,000
HFC-134a	811-97-2	CH ₂ FCF ₃	1,300
HFC-143	430-66-0	C ₂ H ₃ F ₃	300
HFC-143a	420-46-2	C ₂ H ₃ F ₃	3,800
HFC-152	624-72-6	CH ₂ FCH ₂ F	53
HFC-152a	75-37-6	CH ₃ CHF ₂	140
HFC-161	353-36-6	CH ₃ CH ₂ F	12
HFC-227ea	431-89-0	C ₃ HF ₇	2,900
HFC-236cb	677-56-5	CH ₂ FCF ₂ CF ₃	1,340
HFC-236ea	431-63-0	CHF ₂ CHFCF ₃	1,370
HFC-236fa	690-39-1	C ₃ H ₂ F ₆	6,300
HFC-245ca	679-86-7	C ₃ H ₃ F ₅	560
HFC-245fa	460-73-1	CHF ₂ CH ₂ CF ₃	1,030
HFC-365mfc	406-58-6	CH ₃ CF ₂ CH ₂ CF ₃	794
HFC-43-10mee	138495-42-8	CF ₃ CFHCFHCF ₂ CF 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 ₂ F ₆	9,200
PFC-218 (Perfluoropropane)	76-19-7	C ₃ F ₈	7,000
Perfluorocyclopropane	931-91-9	C-C ₃ F ₆	17,340
PFC-3-1-10 (Perfluorobutane)	355-25-9	C ₄ F ₁₀	7,000
Perfluorocyclobutane	115-25-3	C-C ₄ F ₈	8,700
PFC-4-1-12 (Perfluoropentane)	678-26-2	C ₅ F ₁₂	7,500
PFC-5-1-14 (Perfluorohexane)	355-42-0	C ₆ F ₁₄	7,400
PFC-9-1-18	306-94-5	C ₁₀ F ₁₈	7,500

“Innovative Control Technology” means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy economics, or non-air quality environmental impacts.

“Lowest Achievable Emission Rate” (LAER) means the same as defined in 7 DE Admin. Code 1101, "Definitions and Administrative Principles".

“Major Modification”

- Major modification means any physical change or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the CAA.
- Any net emissions increase that is significant for either volatile organic compounds or nitrogen oxides shall be considered significant for ozone.
- A physical change or change in the method of operation shall not include:

- Routine maintenance, repair and replacement;
- Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA;
- Use of an alternative fuel at a steam-generating unit to the extent that the fuel is generated from municipal solid waste;
- Use of an alternative fuel or raw material by a stationary source which:
 - The source was capable of accommodating before January 6, 1975; unless such change would be prohibited under any previously issued permit condition which was established after January 6, 1975;
 - The source is approved to use under any previously issued PSD permit or under 3.0 of this regulation;
- An increase in the hours of operation or in the production rate, unless such change would be prohibited under any previously issued permit condition which was established after January 6, 1975;
- Any change in ownership at a stationary source.

“Major Stationary Source” - See 2.2 and 3.1 of this regulation.

“Necessary Preconstruction Approvals or Permits” means those permits or approvals required under Delaware air quality control laws and regulations.

“Net Emissions Increase”

- Net emissions increase means the amount by which the sum of the following exceeds zero:
 - Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and
 - Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.
- An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
 - The date five years before construction on the particular change commences; and
 - The date that the increase from the particular change occurs.
- An increase or decrease in actual emissions is creditable only if the Department has not relied on it in issuing a permit for the source under this regulation, which permit is in effect when the increase in actual emissions from the particular change occurs.
- An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.
- An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
- A decrease in actual emissions is creditable only to the extent that:
 - The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
 - It is enforceable at and after the time that actual construction on the particular change begins; and
 - It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
 - It has not been adopted by the Department as a required reduction to be made part of the SIP or it is not required by the Department pursuant to an existing requirement of the SIP.

- An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

“Ozone Transport Region” means the region designated by section 184 of the federal Clean Air Act and comprised of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia and northern Virginia.

“Permanent” (Reductions) means that the actual emission reductions submitted to the Department for certification have been incorporated in a permit or a permit condition or, in the case of a shutdown, the permit to operate for the emission unit or units has been voided.

“Potential to Emit” means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

“Quantifiable” (Reductions) means that the amount, rate and characteristics of emission reductions can be determined by methods that are considered reliable by the Department and the Administrator of the EPA.

“Real” (Reductions) means reductions in actual emissions released into the atmosphere.

“Reconstruction” will be presumed to have taken place where the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of 40 CFR 60.15(f)(1)-(3). A reconstructed stationary source will be treated as a new stationary source for purposes of this regulation. In determining lowest achievable emission rate (LAER) for a reconstructed stationary source, the provisions of 40 CFR 60.15(f)(4) shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.

“Secondary Emissions” means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

- Emissions from ships, trains, or other vehicles coming to or from the new or modified stationary source; and
- Emissions from any offsite support facility or facilities which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

“Significant”

(a) “Significant” means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (TPY)

Sulfur dioxide: 40 TPY

Particulate matter: 25 TPY

Ozone:

New Castle and Kent Counties - 25 TPY of either
volatile organic compounds or nitrogen oxides *

Sussex County - 40 TPY of either
volatile organic compounds or nitrogen oxides *

Lead: 0.6 TPY

Asbestos: 0.007 TPY

Beryllium: 0.0004 TPY

Mercury: 0.1 TPY

Vinyl chloride: 1 TPY

Fluorides: 3 TPY

Sulfuric acid mist: 7 TPY

Hydrogen sulfide (H₂S): 10 TPY

Total reduced sulfur (including H₂S): 10 TPY

Reduced sulfur compounds (including H₂S): 10 TPY

PM₁₀ particulate: 15 TPY

*Note: Increases in net emissions shall not exceed 25 tons per year in New Castle and Kent Counties, or 40 tons per year in Sussex, when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years which includes the calendar year in which such increases occur. No part of the five consecutive years shall extend before January 1, 1991.

(b) "Significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the CAA that (a) does not list, any emissions rate.

(c) Notwithstanding (a), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than one µg/m³, (24-hour average).

"Stationary Source" means any building, structure, facility or installation which emits or may emit any air pollutant subject to regulation under the CAA.

"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 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 GHG shall not be subject to regulation except as follows:

(a) Beginning January 2, 2011, the pollutant GHG shall be subject to regulation if:

- : The stationary source is a new major stationary source for any pollutant subject to regulation under the CAA that is not GHG and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or
- : The stationary source is an existing major stationary source for any pollutant subject to regulation under the CAA that is not GHG and also will have an emissions increase of that pollutant and an emissions increase of 75,000 tpy CO₂e or more; and, in addition,

(b) Beginning July 1, 2011, the pollutant GHG also shall be subject to regulation:

- : At a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e; or
- : At an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more.

The term emissions increase, as used above, shall mean that both a significant emissions increase and a significant net emissions increase occur.

“Surplus” (Reductions) means actual emission reductions below the baseline (see 2.5.2 of this regulation) not required by regulations or proposed regulations, and not used by the source to meet any state or federal regulatory requirements.

08/11/2005

2.0 Emission Offset Provisions (EOP)

- 2.1 Applicability - The provisions of 2.0 of this regulation shall apply to any person responsible for any proposed new major stationary source or any proposed major modification.
- 2.2 For purposes of 2.0 of this regulation, "major stationary source" means:
 - 2.2.1 Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act, except for either volatile organic compound or nitrogen oxides, or
 - 2.2.2 Any stationary source of air pollutants which emits, or has the potential to emit either volatile organic compounds or nitrogen oxides in the following amounts:
 - 2.2.2.1 For areas in ozone attainment, ozone marginal, or ozone moderate nonattainment areas and located in the ozone transport region - 50 tons per year volatile organic compounds or 100 tons per year of oxides of nitrogen, or
 - 2.2.2.2 For serious ozone nonattainment areas - 50 tons per year of either volatile organic compounds or oxides of nitrogen, or
 - 2.2.2.3 For severe ozone nonattainment areas - 25 tons per year of either volatile organic compounds or oxides of nitrogen, or
 - 2.2.2.4 For extreme ozone nonattainment areas - 10 tons per year of either volatile organic compounds or oxides of nitrogen.
 - 2.2.3 Any physical change that would occur at a stationary source not qualifying under 2.2.1 or 2.2.2 of this regulation as a major stationary source, if the change would constitute a major stationary source by itself, or
 - 2.2.4 A major stationary source that is major for either volatile organic compounds or nitrogen oxides shall be considered major for ozone, and "installation" means an identifiable piece of process, combustion or incineration equipment.
- 2.3 For the purposes of 2.4 and 2.5 of this regulation, emission units located in areas designated as attainment or marginal nonattainment areas that are located within the ozone transport region shall be considered located in a moderate ozone nonattainment area.
- 2.4 Conditions for Approval - No person subject to the provisions of 2.1 of this regulation shall install a major stationary source of volatile organic compounds or of nitrogen oxides, or make a major modification to a source which will cause or contribute to any violation of the national ambient air quality standards for ozone within an area of non-attainment for that pollutant unless the following conditions are met:
 - 2.4.1 The new major source or the major modification is controlled by the application of lowest achievable emission rate (LAER) control technology.
 - 2.4.2 All existing sources in the State owned or controlled by the owner of the proposed new or modified source are in compliance with the applicable local, State and federal regulations or are in compliance with a consent order specifying a schedule and timetable for compliance.
 - 2.4.3 The new or modified source must satisfy the following offset requirements:
 - 2.4.3.1 The ratio of total actual emissions reductions of volatile organic compounds or nitrogen oxides to total allowable increased emissions of volatile organic compounds or nitrogen oxides shall be:
 - 2.4.3.1.1 For moderate ozone nonattainment areas, 1.15 to 1, or
 - 2.4.3.1.2 For serious ozone nonattainment areas, 1.2 to 1, or

- 2.4.3.1.3 For severe ozone nonattainment areas, 1.3 to 1, or
- 2.4.3.1.4 For extreme ozone nonattainment areas, 1.5 to 1.

2.4.3.2 All offsets shall be federally enforceable at the time of application to construct and shall be in effect by the time the new or modified source commences operation.

2.4.4 The application for construction permit pursuant to 7 **DE Admin. Code** 1102 shall include an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

2.4.5 Public participation for the construction permit shall be pursuant to 12.3 or 12.4 and 12.5 of 7 **DE Admin. Code** 1102.

2.5 Criteria for Emission Reductions Used as Offsets

2.5.1 All emission reductions claimed as offset credits shall be real, surplus, permanent, quantifiable, and federally enforceable;

2.5.2 The baseline for determining credit for emissions reductions shall be the lower of actual or allowable emissions. The offset credit shall only be allowed for emission reductions made below the baseline;

2.5.3 Emission reductions claimed as offsets shall have occurred on or after January 1, 1991;

2.5.4 Credit for an emission reduction may be claimed for use as an offset to the extent that the Department has not relied on it in issuing any permit under this regulation and has not relied on it for demonstration of attainment or reasonable further progress;

2.5.5 Emission reductions shall not be used as offsets in an area with a higher nonattainment classification than the one in which they were generated.

2.5.6 Emission reductions claimed as offsets by a source must be generated from within the same nonattainment area or from any other area that contributes to a violation of the ozone National Ambient Air Quality Standard in the nonattainment area which the source is located.

2.6 Emission reductions generated in a state other than Delaware and which are placed in the emissions bank established pursuant to 7 **DE Admin. Code** 1134 may be used as offsets provided they are federally enforceable and meet, at a minimum, all the provisions of 7 **DE Admin. Code** 1134 and 2.5.5, and 2.5.6 of this regulation.

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3.0 Prevention of Significant Deterioration of Air Quality

3.1 Definitions - For the purposes of 3.0 of this regulation:

“Major Stationary Source” means:

- Any of the following stationary sources of air pollutants which emits or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the CAA: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

- Notwithstanding the stationary source size specified in the above paragraph, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the CAA; or
- Any physical change that would occur at a stationary source not otherwise qualifying under the preceding paragraph as a major stationary source, if the change would constitute a major stationary source by itself.

A major stationary source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone.

3.2 Ambient Air Increments. In areas designated as Class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

**Maximum allowable increase
(Micrograms per cubic meter)**

Class I

Pollutant

Total suspended particulates:

Annual geometric mean	5
24-hour maximum	10

Sulfur dioxide:

Annual arithmetic mean	2
24-hour maximum	5
Three-hour maximum	25

Class II

Pollutant

Total suspended particulates:

Annual geometric mean	19
24-hour maximum	37

Sulfur dioxide:

Annual arithmetic mean	20
24-hour maximum	91
Three-hour maximum	512

Class III

Total suspended particulates:

Annual geometric mean	37
24-hour maximum	75

Sulfur dioxide:

Annual arithmetic mean	40
24-hour maximum	182
Three-hour maximum	700

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

- 3.3 Ambient Air Ceilings. No concentration of a pollutant shall exceed:
 - 3.3.1 The concentration permitted under the national secondary ambient air quality standard, or
 - 3.3.2 The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.
- 3.4 Restrictions on Area Classification.
 - 3.4.1 All Areas in the State of Delaware are designated Class II, but may be redesignated as provided in 40 CFR 52.51(g).
 - 3.4.2 The following areas may be redesignated only as Class I:
 - 3.4.2.1 Bombay Hook National Wildlife Refuge; and
 - 3.4.2.2 A national park or national wilderness area established after August 7, 1977 which exceeds 10,000 acres in size.
- 3.5 Exclusions from Increment Consumption
 - 3.5.1 Upon written request of the governor, made after notice and opportunity for at least one public hearing to be held in accordance with procedures established by the State of Delaware, the Department shall exclude the following concentrations in determining compliance with a maximum allowable increase:
 - 3.5.1.1 Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;
 - 3.5.1.2 Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;
 - 3.5.1.3 Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;
 - 3.5.2 No exclusion of such concentrations shall apply more than five years after the effective date of the order to which 3.5.1.1 of this regulation refers or the plan to which 3.5.1.2 of this regulation refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.
- 3.6 Stack Heights

The provisions of 7 **DE Admin. Code** 1127 - STACK HEIGHTS, are applicable to 3.6 of this regulation.
- 3.7 Review of Major Stationary Sources and Major Modifications - Source Applicability and Exemptions.
 - 3.7.1 No stationary source or modification to which the requirements of 3.8 through 3.15 of this regulation apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. The Department has authority to issue any such permit.
 - 3.7.2 The requirements of 3.8 through 3.15 of this regulation shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the CAA that it would emit, except as 3.0 of this regulation otherwise provides.

- 3.7.3 The requirements of 3.8 through 3.15 of this regulation apply ~~only~~ to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable.
- 3.7.4 The requirements of 3.8 through 3.15 of this regulation shall not apply to a particular major stationary source or major modification, if:
- 3.7.4.1 The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor requests that it be exempt from those requirements; or
 - 3.7.4.2 The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:
 - 3.7.4.2.1 Coal cleaning plants (with thermal dryers);
 - 3.7.4.2.2 Kraft pulp mills;
 - 3.7.4.2.3 Portland cement plants;
 - 3.7.4.2.4 Primary zinc smelters;
 - 3.7.4.2.5 Iron and steel mills;
 - 3.7.4.2.6 Primary aluminum ore reduction plants;
 - 3.7.4.2.7 Primary copper smelters;
 - 3.7.4.2.8 Municipal incinerators capable of charging more than 250 tons of refuse per day;
 - 3.7.4.2.9 Hydrofluoric, sulfuric, or nitric acid plants;
 - 3.7.4.2.10 Petroleum refineries;
 - 3.7.4.2.11 Lime plants;
 - 3.7.4.2.12 Phosphate rock processing plants;
 - 3.7.4.2.13 Coke oven batteries;
 - 3.7.4.2.14 Sulfur recovery plants;
 - 3.7.4.2.15 Carbon black plants (furnace process);
 - 3.7.4.2.16 Primary lead smelters;
 - 3.7.4.2.17 Fuel conversion plants;
 - 3.7.4.2.18 Sintering plants;
 - 3.7.4.2.19 Secondary metal production plants;
 - 3.7.4.2.20 Chemical process plants;
 - 3.7.4.2.21 Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 - 3.7.4.2.22 Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - 3.7.4.2.23 Taconite ore processing plants;
 - 3.7.4.2.24 Glass fiber processing plants;
 - 3.7.4.2.25 Charcoal production plants;
 - 3.7.4.2.26 Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
 - 3.7.4.2.27 Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the CAA; or
 - 3.7.4.3 The source is a portable stationary source which has previously received a permit under 3.0 of this regulation, and,
 - 3.7.4.3.1 The owner or operator proposal to relocate the source and emissions of the source at the new location would be temporary; and
 - 3.7.4.3.2 The emissions from the source would not exceed its allowable emissions; and

3.7.4.3.3 The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

3.7.4.3.4 Reasonable notice is given to the Department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Department not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Department.

3.7.5 The requirements of 3.8 through 3.15 of this regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as non-attainment.

3.7.6 The requirements of 3.9, 3.11, and 3.13 of this regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

3.7.6.1 Would impact no Class I area and no area where an applicable increment is known to be violated, and

3.7.6.2 Would be temporary.

3.7.7 The Department may exempt a stationary source or modification from the requirements of 3.11 of this regulation with respect to monitoring for a particular pollutant if:

3.7.7.1 The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide: 575 ug/m³, eight-hour average;

Nitrogen dioxide: 14 ug/m³, annual average;

Total suspended particulate: 10 ug/m³, 24-hour average;

Sulfur dioxide: 13 ug/m³, 24-hour average;

Ozone: (See Note 1)

Lead: 0.1 ug/m³, 24-hour average;

Mercury: 0.25 ug/m³, 24-hour average;

Beryllium: 0.0005 ug/m³, 24-hour average;

Fluorides: 0.25 ug/m³, 24-hour average;

Vinyl chloride: 15 ug/m³, 24-hour average;

Total reduced sulfur: 10 ug/m³, one-hour average;

Hydrogen sulfide: 0.04 ug/m³, one-hour average;

Reduced sulfur compounds: 10 ug/m³, one-hour average;

PM₁₀ particulate: 10 ug/m³, 24-hour average

[Note 1: No de minimus air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.]

3.7.7.2 The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in 3.7.7.1 of this regulation, or the pollutant is not listed in 3.7.7.1 of this regulation.

3.8 Control Technology Review

3.8.1 A major stationary source or major modification shall meet each applicable emissions limitation of the State of Delaware's Air Pollution Control Regulations.

- 3.8.2 A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the CAA that it would have the potential to emit in significant amounts.
- 3.8.3 A major modification shall apply best available control technology for each pollutant subject to regulation under the CAA for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.
- 3.8.4 For phase construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.
- 3.9 Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:
 - 3.9.1 Any national ambient air quality standard in any air quality control region; or
 - 3.9.2 Any applicable maximum allowable increase over the baseline concentration in any area.
- 3.10 Air Quality Models.
 - 3.10.1 All estimates of ambient concentrations required under 3.0 of this regulation shall be based on the applicable air quality models, databases, and other requirements specified in the "Guideline on Air Quality Models" (OA-QPS 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April, 1978 or its subsequent revisions). This document is incorporated by reference.
 - 3.10.2 When an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to the notice and opportunity for public comment under 3.15 of this regulation. Written approval of the Department must be obtained for any modification or substitution. Methods like those outlined in the "Workbook for the Comparison of Air Quality Models" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 17711, May, 1978 or its subsequent revisions) should be used to determine the comparability of air quality models.
- 3.11 Air Quality Analysis
 - 3.11.1 Preapplication Analysis.
 - 3.11.1.1 Any application for a permit under 3.0 of this regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:
 - 3.11.1.1.1 For the source, each pollutant that it would have the potential to emit in a significant amount;
 - 3.11.1.1.2 For the modification, each pollutant for which it would result in a significant net emissions increase.
 - 3.11.1.2 With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.
 - 3.11.1.3 With respect to any such pollutant (other than non-methane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.
 - 3.11.1.4 In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding

receipt of the application, except that, if the Department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

- 3.11.1.5 The owner or operator of a proposed stationary source or modification of volatile organic compounds or nitrogen oxides who satisfies all of the following conditions may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under 3.11.1 of this regulation.

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

Condition 2: The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in Delaware are in compliance with all applicable emission limitations and standards under the CAA (or are in compliance with an expeditious schedule approved by the Department).

Condition 3: Emission reductions ("offsets") from existing sources in the area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS. Only intrapollutant emission offsets will be acceptable (e.g., hydrocarbon increases may not be offset against SO₂ (reductions)).

Condition 4: The emission offsets will provide a positive net air quality benefit in the affected area (see 40 CFR Part 51 App. S). Atmospheric simulation modeling is not necessary for volatile organic compounds and NO_x. Fulfillment of Condition 3 will be considered adequate to meet this condition for volatile organic compounds and NO_x.

- 3.11.2 Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification conduct such ambient monitoring as the Department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

- 3.11.3 Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the Quality Assurance Requirements for PSD Air Monitoring as preapproved by the Department during the operation of monitoring stations for purposes of satisfying 3.11 of this regulation.

- 3.12 Source Information. The owner or operator of proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under 3.0 of this regulation.

- 3.12.1 With respect to a source or modification to which 3.9, 3.11, and 3.13 of this regulation apply, such information shall include but not be limited to:

3.12.1.1 A description of the nature, location, design capacity and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

3.12.1.2 A detailed schedule for construction of the source or modification;

3.12.1.3 A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

- 3.12.2 Upon request of the Department, the owner or operator shall also provide information on:

3.12.2.1 The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

3.12.2.2 The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977 or the applicable baseline date or dates, in the area the source or modification would affect.

- 3.13 Additional Impact Analyses.

- 3.13.1 The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.
- 3.13.2 The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

3.14 Public Participation

- 3.14.1 Within 30 days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of 3.0 of this regulation, the date on which the Department received all required information.
- 3.14.2 Within one year after receipt of a complete application, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:
 - 3.14.2.1 Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.
 - 3.14.2.2 Make available a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.
 - 3.14.2.3 Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at public hearing as well as written public comment.
 - 3.14.2.4 Send a copy of the notice of public comment to the applicant and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: the chief executives of the city and county where the source or modification would be located and any comprehensive regional land use planning agency whose lands may be affected by emissions from the source or modification. Additionally, if the proposed source would have significant interstate impact, the Governor of that impacted state would be notified.
 - 3.14.2.5 Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.
 - 3.14.2.6 Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing or hearings in making a final decision on the approvability of the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed source or modification.
 - 3.14.2.7 Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to 3.0 of this regulation.
 - 3.14.2.8 Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the source or modification.

3.15 Source Obligation.

- 3.15.1 Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to 3.0 of this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to 3.0 of this regulation who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.
 - 3.15.2 Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between constructions of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.
 - 3.15.3 Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of any other requirements under local or Federal law.
 - 3.15.4 At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of 3.8 through 3.15 of this regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.
- 3.16 Innovative Control Technology.
- 3.16.1 An owner or operator of a proposed major stationary source or major modification may request the Department in writing no later than 30 days after the close of the public comment hearing to approve a system of innovative control technology.
 - 3.16.2 The Department shall, with the consent of the Governor of Delaware, determine that the source or modification may employ a system of innovative control technology, if:
 - 3.16.2.1 The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;
 - 3.16.2.2 The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under 3.8.2 of this regulation by a date specified by the Department. Such date shall not be later than four years from the time of startup or seven years from permit issuance;
 - 3.16.2.3 The source or modification would meet the requirements of 3.8 and 3.9 of this regulation based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Department;
 - 3.16.2.4 The source or modification would not be before the date specified by the Department:
 - 3.16.2.4.1 Cause or contribute to a violation of an applicable national ambient air quality standard; or
 - 3.16.2.4.2 Impact any Class I area; or
 - 3.16.2.4.3 Impact any area where an applicable increment is known to be violated; and
 - 3.16.2.5 All other applicable requirements including those for public participation have been met.
 - 3.16.3 The Department shall withdraw any approval to employ a system of innovative control technology made under 3.0 of this regulation, if:
 - 3.16.3.1 The proposed system fails before the specified date to achieve the required continuous emissions reduction rate; or
 - 3.16.3.2 The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or
 - 3.16.3.3 The Department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.
 - 3.16.4 If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with 3.16.3 of this regulation,

the Department may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

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4.0 Minor New Source Review (MNSR)

- 4.1 Applicability. The requirements of 4.3 of this regulation shall apply to any person responsible for any proposed new stationary source, the construction of which:
 - 4.1.1 was applied for, pursuant to 11.0 of 7 **DE Admin Code** 1102, after August 11, 2005 and
 - 4.1.2 is subject to the construction, installation, or alteration requirements of 2.1.3 of 7 **DE Admin Code** 1102, and
 - 4.1.3 is not subject to the requirements of 2.0 or 3.0 of this regulation, and
 - 4.1.4 has a potential to emit of equal to or greater than five tons per year of volatile organic compounds (VOC's) or, nitrogen oxides (NO_x), or sulfur dioxide (SO₂) or sulfur trioxide (SO₃) or both [also termed sulfur oxides (SO_x)] or, fine particulate matter (PM_{2.5}), or, the potential to emit of equal to or greater than five tone per year, in the aggregate, of any of the hazardous air pollutants (HAP's) listed in Section 112(b) of the federal Clean Air Act.
 - 4.1.5 Reserved.
- 4.2 Record keeping. Any person exempted from the requirements of 4.3 of this regulation because the proposed source has emissions below the thresholds provided for in 4.1.4 of this regulation shall include with the application submitted pursuant to 11.1 of 7 **DE Admin. Code** 1102, documentation that shows the proposed source is exempted.
- 4.3 Conditions for Approval. Any person subject to the provisions of 4.3 of this regulation shall meet the appropriate requirements of 4.3.1 and 4.3.2 of this regulation:
 - 4.3.1 The new stationary source shall, relative to each pollutant identified in 4.1.4 of this regulation, be controlled by installing and operating emission control technology that limits emissions to the atmosphere by utilizing any one of the following options listed below. The Department will assist in the development of appropriate emission control technology determinations if requested by the applicant.
 - 4.3.1.1 Emission control technology that meets the LAER requirements of 2.0 of this regulation, or
 - 4.3.1.2 Emission control technology that meets the BACT requirements of 3.0 of this regulation, or
 - 4.3.1.3 Emission control technology approved in advance by the Department for the source type being constructed (a listing and description of the approved technologies is available from the Department), or
 - 4.3.1.4 Emission control technology approved by the Department, on a case-by-case basis, pursuant to the following process:
 - 4.3.1.4.1 Identify and evaluate air pollution control technologies that may be applied to the source. The control alternatives need not be limited to existing controls for the source category. Consider controls applied to similar type of sources, innovative control technologies, modification of the process or process equipment, other pollution prevention measures, and combinations of these measures.
 - 4.3.1.4.2 List the control technologies identified in 4.3.1.4.1 of this regulation in descending order of air pollution control effectiveness.
 - 4.3.1.4.3 Either propose the most effective technology on the list generated under 4.3.1.4.2 of this regulation for approval by the Department, or demonstrate, based on the criteria in 4.3.1.4.3.1 through 4.3.1.4.3.4 of this regulation below, that the most effective technology is infeasible or unreasonable. This process for evaluation shall be repeated relative to each emission control technology on the list generated under

4.3.1.4.2 of this regulation until an emission control technology is reached that is not eliminated.

- 4.3.1.4.3.1 Technological Feasibility Assessment: A demonstration that the control technology is technically infeasible, based on physical, chemical, or engineering principles, that it is unproven technology, or that technical difficulties would prevent its successful application, or
- 4.3.1.4.3.2 Environmental Impacts Assessment: A demonstration that the control technology should be eliminated from consideration based on its environmental impacts. The demonstration must show that the adverse environmental effects of the control technology (for example, effects on water or land, HAP emissions, or increased environmental hazards), when compared with its air contaminant emission reduction benefits, would make use of the technology unreasonable, or
- 4.3.1.4.3.3 Economic Impacts Assessment: A demonstration that the technology should be eliminated from consideration based on its calculated economic impacts using the techniques in the latest edition of EPA's Control Cost Manual. The justification must show that the total and incremental costs of the control technology are greater than the total and incremental costs of the next less effective technology on the list generated under 4.3.1.4.2; and that the extra costs, when compared with the air contaminant emission reduction benefits resulting from the control technology, would make that measure unreasonable, or
- 4.3.1.4.3.4 Energy Impacts Assessment: A demonstration that the control technology should be eliminated from consideration based on its energy impacts. The demonstration must show that this technology uses fuels that are not reliably available; or that the energy consumed by this technology is greater than the proposed technology or technologies, and that the extra energy used, when compared with the air contaminant emission reduction benefits resulting from this technology, would make use of this technology unreasonable.

4.3.2 All of the following information shall be submitted to the Department as part of the application submitted to the Department pursuant to 11.1 of 7 **DE Admin. Code** 1102:

- 4.3.2.1 Control technology proposed to be installed and operated to meet the requirements of 4.3.1 of this regulation, and
- 4.3.2.2 The list, if this method was chosen, generated pursuant to 4.3.1.4.2 of this regulation and
- 4.3.2.3 Any demonstration or demonstrations performed pursuant to 4.3.1.4.3 of this regulation.

2 DE Reg. 2148 (05/01/99)

9 DE Reg. 246 (08/01/05)

12 DE Reg. 347 (09/01/08)

08/11/2005

1130 Title V State Operating Permit Program

[44/45/1993 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 (PM₁₀) nonattainment areas classified as "serious", sources with the potential to emit 70 tpy or more of PM₁₀.

(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 Deposition 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 (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF₆), 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 CO₂ equivalent emissions.

(2) The term tpy CO₂ equivalent emissions (CO₂e) 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 CO₂e.

Table 2-1

GLOBAL WARMING POTENTIALS

<u>Name</u>	<u>CAS No.</u>	<u>Chemical formula</u>	<u>Global warming potential (100 yr.)</u>
Carbon dioxide	124-38-9	CO ₂	1
Methane	74-82-8	CH ₄	21
Nitrous oxide	10024-97-2	N ₂ O	310
HFC-23	75-46-7	CHF ₃	11,700
HFC-32	75-10-5	CH ₂ F ₂	650
HFC-41	593-53-3	CH ₃ F	150
HFC-125	354-33-6	C ₂ HF ₅	2,800
HFC-134	359-35-3	C ₂ H ₂ F ₄	1,000
HFC-134a	811-97-2	CH ₂ FCF ₃	1,300
HFC-143	430-66-0	C ₂ H ₃ F ₃	300
HFC-143a	420-46-2	C ₂ H ₃ F ₃	3,800
HFC-152	624-72-6	CH ₂ FCH ₂ F	53
HFC-152a	75-37-6	CH ₃ CHF ₂	140
HFC-161	353-36-6	CH ₃ CH ₂ F	12
HFC-227ea	431-89-0	C ₃ HF ₇	2,900
HFC-236cb	677-56-5	CH ₂ FCF ₂ CF ₃	1,340
HFC-236ea	431-63-0	CHF ₂ CHF ₂ CF ₃	1,370
HFC-236fa	690-39-1	C ₃ H ₂ F ₆	6,300
HFC-245ca	679-86-7	C ₃ H ₃ F ₅	560
HFC-245fa	460-73-1	CHF ₂ CH ₂ CF ₃	1,030
HFC-365mfc	406-58-6	CH ₃ CF ₂ CH ₂ CF ₃	794
HFC-43-10mee	138495-42-8	CF ₃ CFHCFHCF ₂ CF 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)	<u>76-16-4</u>	<u>C₂F₆</u>	<u>9,200</u>
PFC-218 (Perfluoropropane)	<u>76-19-7</u>	<u>C₃F₈</u>	<u>7,000</u>
Perfluorocyclopropane	<u>931-91-9</u>	<u>C-C₃F₆</u>	<u>17,340</u>
PFC-3-1-10 (Perfluorobutane)	<u>355-25-9</u>	<u>C₄F₁₀</u>	<u>7,000</u>
Perfluorocyclobutane	<u>115-25-3</u>	<u>C-C₄F₈</u>	<u>8,700</u>
PFC-4-1-12 (Perfluoropentane)	<u>678-26-2</u>	<u>C₅F₁₂</u>	<u>7,500</u>
PFC-5-1-14 (Perfluorohexane)	<u>355-42-0</u>	<u>C₆F₁₄</u>	<u>7,400</u>
PFC-9-1-18	<u>306-94-5</u>	<u>C₁₀F₁₈</u>	<u>7,500</u>

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, §6011**, 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 5 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.

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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.

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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;
 - PM₁₀ 15 tpy;
 - SO₂ 40 tpy; and
 - NO_x 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.

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