

## Title 24 Chapter 5

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## CHAPTER 05

### AIR EMISSION RULES AND REGULATIONS

#### I. GENERAL PROVISIONS

**24.0501. Definitions.** As used in these Standards and Regulations:

(1) “Air pollutant” means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes odorous substances and any precursors to the formation of any pollutant, to the extent that the agent or combination of such agents is identified in any federal or territory rules as precursors.

(2) “Air pollution” means the presence in the outdoor atmosphere of one or more substances in such quantities and duration as is or tends to be injurious to human health or welfare, plant or animal life or property, or would unreasonably interfere with the enjoyment of life or property.

(3) “Air pollution control equipment” means equipment or a facility of a type intended to eliminate, prevent, reduce, or control the emissions of any regulated or hazardous air pollutant to the atmosphere.

(4) “Air pollution emission source,” “emission source,” “stationary air pollution source” or “source” means any piece of equipment or activity at a building, structure, facility, or installation that emits or may emit any air pollutant. For this definition, “Building, structure, facility, or installation” means all of the air pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except for the activities of any vessel which are not regulated under the federal Clean Air Act. Air 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, 1987).

(5) “Allowable emissions” means the emissions of an air pollution emission source calculated using the maximum rated capacity of the source, or, if the source is subject to federally enforceable limits which restrict the operating rate, capacity, or hours of operations, or any combination of these, then the maximum of the source, considering federally enforceable limits, and the most stringent of the following:

(A) The applicable standards set forth in 40 CFR Parts 60, 61, and 63;

(B) Any American Samoa implementation plan emission limitation, including those with future compliance dates; and

(C) The emission rates specified in a federally enforceable permit condition, including those with future compliance dates.

(6) “Applicant” means any person who submits an application for a permit.

(7) “ASEPA” means the American Samoa Environmental Protection Agency or its authorized agents.

(8) “ASCA” means the American Samoa Code Annotated.

(9) “Best available control technology” means an emissions limitation including a visible emission standard based on the maximum degree of reduction for each pollutant subject

to regulation approved pursuant to the Clean Air Act which would be emitted from any proposed air pollution emission source or modification which the executive secretary, on a cases-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion 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 promulgated pursuant to 40 CFR Parts 60, 61, and 63. If the executive secretary 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.

(10) "BTU" means British thermal unit.

(11) "CFR" means the Code of Federal Regulations.

(12) "Clean Air Act" means the Clean Air Act of 1963, as amended, 42 U.S.C. Section 7401, *et. seq.*

(13) "Commenced" as applied to construction of or modification to an air pollution emission source, means that the owner or operator, has all necessary preconstruction approvals or permits and either has:

(A) Begun, or caused to begin a continuous program of actual operation on-site construction of the source; or

(B) 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 operation or construction of the source.

(14) "Commission" means the Environmental Quality Commission.

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

(16) "Compliance Plan" means a plan which includes a description of how an owner or operator proposes to comply with all applicable requirements of these Standards and Regulations and includes a schedule of compliance and a schedule under which the owner or operator will submit progress reports to the Commission.

(17) "Construction" means a 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.

(18) "Director of ASEPA" or "director" means both the director of the ASEPA and the executive secretary of the environmental quality commission or his authorized agents.

(19) "Draft permit" means the version of a permit for which the director offers public notice, including the method by which a public hearing can be requested, and an opportunity for public comment pursuant to section 24.0539.

- (20) “Emission” means the act of releasing or discharging air pollutants into the ambient air from any source or an air pollutant which is released or discharged into the ambient air from any source.
- (21) “Emission limitation” means a requirement established by the director of ASEPA or USEPA Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.
- (22) “Emissions unit” means any part or activity of an air pollution emission source that has the potential to emit any regulated or hazardous air pollutant.
- (23) “Executive secretary” means both the executive secretary of the Environmental Quality Commission and the director of the ASEPA or his authorized agents.
- (24) “Existing air pollution emission source” means an air pollution emission source that has received an air pollution control permit, commenced construction or a modification, or was in operation prior to the effective date of these Standards and Regulations.
- (25) “Federally enforceable” means all limitations and conditions which are enforceable by the USEPA Administrator or any person commencing an action under 42 U.S.C. 7604, including those requirements developed pursuant to 40 CFR Parts 60, 61, and 63; requirements within the American Samoa Implementation Plan; or any permit requirements established pursuant to 40 CFR 52.21 or all permit terms and conditions in a stationary air pollution source permit except those specifically designated as not federally enforceable or regulations approved pursuant to 40 CFR Part 51 Subpart I, and also including operating permits issued under an EPA-approved program that is incorporated into these standards and regulations and expressly requires adherence to any permit issued under such a program.
- (26) “Fuel burning equipment” means a furnace, boiler, apparatus, stack, and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by heat transfer.
- (27) “Fugitive emissions” means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (28) “Hazardous Air Pollutant” or “HAP” means those hazardous air pollutants listed in or promulgated pursuant to Section 112(b) of the federal Clean Air Act and any other hazardous air pollutants referenced in section 24.0541 of these standards and regulations.
- (29) “mg/m<sup>3</sup>” means milligrams per cubic meter.
- (30) “Month” means a calendar month.
- (31) “NAAQS” means the National Ambient Air Quality Standards contained in 40 CFR Part 50.
- (32) “National Emission Standards for Hazardous Air Pollutants” means the federal emission standards contained in 40 CFR Parts 61 and 63.
- (33) “New air pollution emission source” means an air pollution emission source that commenced construction or modification on or after the effective date of these Standards and Regulations.
- (34) “Opacity” means a condition which renders material partially or wholly impervious to rays of visible light and causes obstruction of an observer’s view.
- (35) “Owner or operator” means a person who owns, leases, operates, controls, or supervises an air pollution emission source.

- (36) “Particulate matter” means any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.
- (37) “Permit” means written authorization from the Commission, and as applicable, the USEPA Administrator, to construct, modify, relocate, or operate any regulated or hazardous air pollutant source.
- (38) “Permit renewal” means the process by which a permit is reissued at the end of its term.
- (39) “Person” means an individual, firm, corporation, association, partnership, consortium, subdivision of the Territory, or, to the extent they are subject to these Standards and Regulations, the United States or any municipality, or any interstate body.
- (40) “PM10” means particulate matter with the aerodynamic diameter less than or equal to a nominal ten micrometers.
- (41) “Potential annual heat input” means the product of the maximum rated heat input capacity (megawatts or million BTU per hour) times 8760 hours per year.
- (42) “Potential to emit” means the maximum capacity of an air pollution emission 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 Commission and the USEPA Administrator.
- (43) “Reconstruction” means the replacement of components at an existing air pollution emission source to such an extent that the fixed capital cost of the new components exceeds fifty per cent of the fixed capital cost that would be required to construct a comparable entirely new air pollution emission source.
- (44) “Regulated air pollutant” means:
- (A) Nitrogen oxides or any volatile organic compound;
  - (B) Any air pollutant for which a national or American Samoa ambient air quality standard has been promulgated;
  - (C) Any air pollutant that is subject to a standard promulgated under section 111 of the Clean Air Act;
  - (D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act;
  - (E) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Clean Air Act, including sections 112(g), (j), and (r) of the Clean Air Act, including the following:
    - (i) Any pollutant subject to requirements under section 112(j) of the Clean Air Act. If the date established pursuant to section 112(e) of the Clean Air Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Clean Air Act; and
    - (ii) Any other pollutant subject to a standard or requirement in these Standards and Regulations.
- (45) “Responsible official” means:
- (A) 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 an 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 100 persons or have gross annual sales or expenditures exceeding \$5 million; or
  - (ii) The delegation of authority to such representative is approved in advance by the executive secretary;
- (B) For a partnership or sole proprietorship: a general partner or the proprietor, respectively, or
- (C) For a municipality, state, federal, or other public agency: a principal executive officer, ranking elected official, or an authorized representative is approved in advance by the director. For the purposes of these Standards and Regulations, a principal executive officer of a federal agency having responsibility for the overall operations of a principal geographic unit of the agency.

(46) "Risk Assessment" means the process of determining the potential adverse health effects of human exposure to environmental hazards. The process includes hazard identification, dose-response assessment, exposure assessment and risk characterization by quantifying the magnitude of public health problem that results from the hazard.

(47) "Significant increase" means, in reference to a net emissions increase or the potential of a source to emit:

(A) A rate of emissions that would equal or exceed any of the following pollutant and emission rates:

- (1) Carbon monoxide: 100 tpy;
- (2) Nitrogen oxides: 40 tpy;
- (3) Sulfur dioxide: 40 tpy;
- (4) Particulate matter: a total of 25 tpy of particulate matter of all sizes or 15 tpy of PM10;
- (5) Ozone: 40 tpy of volatile organic compounds;
- (6) Lead: 0.6 tpy;
- (7) Asbestos: 0.007 tpy;
- (8) Beryllium: 0.0004 tpy;
- (9) Mercury: 0.1 tpy;
- (10) Vinyl Chloride: 1 tpy;
- (11) Fluorides: 3 tpy;
- (12) Sulfuric acid mist: 7 tpy;
- (13) Hydrogen sulfide (H<sub>2</sub>S): 10 tpy;
- (14) total reduced sulfur (H<sub>2</sub>S): methyl mercaptan, dimethyl sulfide, and dimethyl disulfide: 10 tpy;
- (15) Reduced sulfur compounds (H<sub>2</sub>S, carbon disulfide and carbonyl sulfide): 10 tpy;
- (16) Municipal waste combustor organics: 3.2 grams per year (3.5 x 10<sup>-6</sup> tpy) measured as total tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans;
- (17) Municipal waste combustor metals: 14 megagrams per year (15 tpy) measured as particulate matter; or
- (18) Municipal waste combustor acid gases: 36 megagrams per year (40 tpy) measured as sulfur dioxide and hydrogen chloride;

(B) Any net emissions increase of a pollutant or the potential of a source to emit a pollutant subject to regulation pursuant to the Clean Air Act that paragraph (1) does not list; and

(C) Notwithstanding paragraph (1), any emissions increase associated with a major pollution emission source or major modification, which would be constructed within ten kilometers of a Class I area, and have an impact on such area equal to or greater than on mg/m<sup>3</sup> (twenty-four hour average).

(48) "Smoke" means the gaseous products of burning carbonaceous materials made visible by the presence of small particles of carbon.

(49) "Source" means property, real or personal, which emits or may emit any air pollutant.

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

(51) "Stationary air pollution source permit" means written authorization from the executive secretary to construct, modify, relocate, or operate an air pollution emission source.

(52) "Tpy" means tons per year.

(53) "Upon program approval" means the date the Territory of American Samoa stationary air pollution source permit program is granted full or interim approval by the USEPA Administrator pursuant to 40 CFR Part 69 and thereafter.

(54) "USEPA" means the United States Environmental Protection Agency.

(55) "USEPA Administrator" means the Administrator of the USEPA or his or her designee.

(56) "VOC" means volatile organic compound.

(57) "Volatile Organic Compound" means a compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than methane; ethane; methylene chloride (dichloromethane); 1,1,1 trichloroethane (methyl chloroform); 1,1,1 tri-chloro-2,2,2 trifluoroethane (CFC - 113); trichlorofluoromethane (CFC- 11); dichlorodifluoromethane (CFC- 12); chlorodifluoromethane (CFC- 22); trifluoromethane (FC- 23); trfluoro-2,2-dichloroethane (HCFC- 123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142B); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(A) Cyclic, branched, or linear, completely fluorinated alkanes;

(B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

**24.0502. Prohibition of air pollution.**

No person, including any public body, shall engage in any activity which causes air pollution or causes or allows the emission of any regulated or hazardous air pollutant without first securing a permit from the Commission when required by these Standards and Regulations.

**24.0503. Conflicts in laws or rules.**

In the event any federal or territory laws, rules, or regulations are in conflict with the provisions of these Standards and Regulations, the most stringent requirement shall apply.

**24.0504. Certification.**

Every application form, report, compliance plan, or compliance certification submitted pursuant to these standards and regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required pursuant to these Standards and Regulations shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

**24.0505 Public access to information.**

(a) Except as provided in subsection (b), the following information shall be considered government records and shall be available for public inspection pursuant to 24.0109 ASCA:

- (1) All permit applications;
- (2) All supporting information for permit applications;
- (3) Compliance plans and schedules;
- (4) Reports and results associated with performance tests and continuous emission monitors;
- (5) Ambient air monitoring data and emissions inventory data;
- (6) Compliance certifications;
- (7) Any other information submitted to the Commission pursuant to the air pollution control permit program;
- (8) Permits; and
- (9) Public comments or testimonies received during any public comment period or public hearing.

(b) Any owner or operator of an existing or proposed air pollution emission source may request confidential treatment of specific information, including information concerning secret processes or methods of manufacture, by submitting a written request

to the Commission at the time of submission, and clearly identifying the specific information that is to be accorded confidential treatment. With respect to each item of confidential information, the owner or operator requesting that it be designated as confidential shall provide documentation concerning:

- (1) How each item of information concerns secret processes, secret method of manufacture, or is determined to be confidential pursuant to ASCA 24.0109;
- (2) Who has access to each item of information;
- (3) What steps have been taken to protect the secrecy of each item of information; and
- (4) Why it is believed each item of information must be accorded confidential treatment and the anticipated prejudice should disclosure be made.

(c) Any information submitted to the Commission without a request for confidentiality in accordance with this section shall be considered a public record;

(1) Upon a satisfactory showing to the Commission by any owner or operator that any records, reports, or information, or particular part thereof, to which the Commission has access pursuant to these Standards and Regulations, contain information of a confidential nature under ASCA 24.0109, the executive secretary shall identify the records, reports or information, or particular part thereof, for which access is restricted or closed by law and these shall be kept confidential except that such records, reports, or information may be disclosed to other territory and federal officers or employees concerned with carrying out these Standards and Regulations or when relevant in any proceeding pursuant thereto. If required by USEPA, all records, reports or information determined by the owner or operator to be confidential shall be submitted directly to USEPA. Neither the contents of the permit nor emissions data shall be entitled to confidentiality protection.

(2) Records, reports, or information for which confidentiality has been claimed may be disclosed only after the requirements of ASCA 24.0160 have been satisfied and the person requesting confidentiality has had an opportunity to obtain judicial review pursuant to subsection (f).

(3) Any person who has claimed confidentiality for records, reports or other information and whose claim was denied by the Commission may obtain judicial review of the denial pursuant to ASCA 24.0160. Records which are the subject of a judicial review shall not be released until the judicial review is complete and only if the court authorizes such release.

(4) All requests for public records shall be in writing, shall be addressed to the executive secretary of the Commission, and shall identify or describe the character of the requested record. Upon approval by the Commission, the requested public record shall be available to the requester for inspection and copying during established office hours. The Commission shall charge a reasonable cost for reproduction of any public record, but not more than twenty-five cents per page, sheet, or fraction thereof.

**24.0506. Prompt reporting of deviations.**

In the event any emission unit, air pollution control equipment, or related equipment breaks down in such a manner as to cause the emission of air pollutants in violation of these Standards and Regulations or a permit, the owner or operator shall immediately notify the executive secretary of the failure or breakdown, unless the protection of personnel or public health or safety demands immediate attention to the failure or breakdown and makes such notification unfeasible. In the latter case, the notice shall be provided as soon as practicable, but in all cases within two working days of the time when emission limitations were exceeded due to the emergency. In the case of emergencies which result in noncompliance with section 24.0537 for air pollution emission sources, compliance with section 24.0537 shall satisfy the requirements of this section.

**24.0507. Penalties and Remedies.**

Any person who violates any provision of these Standards or Regulations or any term or condition of a permit shall be subject to the penalties and remedies provided for in section 24.0150 through 24.0166 ASCA.

**24.0508. Severability.**

If any provision of these Standards and Regulations or their application to other persons or circumstances is held invalid, the application of such provision to other persons or circumstances and the remainder of these Standards and Regulations shall not be affected thereby.

**24.0509. *Reserved***

## II. GENERAL PROHIBITIONS AND STANDARDS

### 24.0510. Ambient Air Quality Standards.

(a) The ambient air quality standards for the territory of American Samoa shall be the same as the National Primary and Secondary Air Quality Standards set forth at 40 CFR 50.1, *et seq.* These standards are enumerated below:

(1) The American Samoa ambient air quality standard for sulfur oxide measured as sulfur dioxide is 1,300 micrograms per cubic meter (0.5 p.p.m.) maximum 3-hour concentration not to be exceeded more than once per year; the 24-hour standard is 0.14 p.p.m not to be exceeded more than once per year; and the annual standard is 0.030 p.p.m not to be exceeded in a calendar year.

(2) The American Samoa 24-hour ambient air quality standards for particulate matter (PM10) is 150 micrograms per cubic meter, 24-hour average concentration. The annual standard for particulate matter is 50 micrograms per cubic meter ( $\text{mg}/\text{m}^3$ ), annual arithmetic mean.

(3) The American Samoa ambient air quality standard for ozone (measured by reference to 40 CFR 50 appendix D) is .12 parts per million ( $235 \text{ mg}/\text{m}^3$ ).

(4) The American Samoa ambient air quality standard for nitrogen dioxide is 0.053 parts per million (100 micrograms per cubic meter ) annual arithmetic mean concentration.

(5) The American Samoa ambient air quality standard for lead is 1.5 micrograms per cubic meter maximum arithmetic mean over a calendar quarter.

(6) The American Samoa ambient air quality standard for carbon monoxide is 10  $\text{mg}/\text{m}^3$  (9ppm) as a maximum 8-hour average concentration not to be exceeded more than once per year, and 40  $\text{mg}/\text{m}^3$  (35 ppm) maximum 1-hour average concentration not to be exceeded more than once per year.

(b) Measurements for American Samoa ambient air quality standards shall be determined using methods set out in 40 CFR part 50, including appropriate appendices thereto, or by any other methods approved in advance by the Commission.

(c) These numerical air quality standards are the maximum allowable concentrations of pollutants in the ambient air necessary to protect the health and welfare of the people of American Samoa. No degradation of the quality of the ambient air shall be permitted in areas in which the concentrations of the identified pollutants are lower than the numerical standards established by these Standards and Regulations unless such lowering of air quality will not violate any applicable federal law or regulations (including prevention of significant deterioration) and it has been adequately demonstrated to the executive secretary that a degradation of the air quality in an area is justified as a result of necessary economic or social development and that such lowering of air quality will not seriously interfere with or become injurious to the health, enjoyment, and comfortable enjoyment of life or property.

**24.0511. Incineration.**

- (a) No person shall cause or permit the emissions of particulate matter to exceed 0.20 pounds per one hundred pounds (two grams per kilogram) of refuse charged from any incinerator.
- (b) All required emission tests shall be conducted at the maximum burning capacity of the incinerator or at other capacities, as approved by the Commission.
- (c) The burning capacity of an incinerator shall be the manufacturer's or designer's guaranteed maximum rate or such other rate as may be determined by the Commission.
- (d) For the purposes of this section, the total of the capacities of all furnaces within one system shall be considered as the incineration capacity.

**24.0512. Open Burning.**

No person shall dispose of combustible material by open burning, or ignite, cause to be ignited, permit to be ignited, or maintain any open fire within the territorial limits of American Samoa, except as follows:

- (1) Open fires for the cooking of food for human consumption on other than commercial premises;
- (2) Fires for recreational or ceremonial purposes;
- (3) Fires to abate a fire hazard, providing a hazard is declared by the fire department or fire district having jurisdiction in the area;
- (4) Fires for prevention or control of disease or pests;
- (5) Fires for training personnel in the methods of fighting fires in compliance with 24.0511(1);
- (6) Fires for the disposal of dangerous materials, but only where there is no alternate method of disposal and such burning is approved in advance by the executive secretary;
- (7) Agricultural burning;
- (8) Other open burning as deemed necessary and approved in advance by the executive secretary.

**24.0513. Hearings.**

Any person who receives an order from the Commission or its authorized representatives as authorized by these Standards and Regulations, or whose permit application is disapproved or denied by the Commission, or is adversely affected by a decision of the Commission may have appeal or judicial review rights as provided for in 24.0123 and 24.0160 ASCA.

**24.0514-24.0519      *Reserved***

### III. STATIONARY AIR POLLUTION SOURCE PERMIT PROGRAM REGULATIONS

**24.0520. Definitions.** As used in this Part:

(1) “Administrative permit amendment” is a permit revision that:

- (A) Corrects typographical errors;
- (B) 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;
- (C) Requires more frequent monitoring or reporting by the permittee;
- (D) Consolidates the terms and conditions of two or more air pollution control permits into one air pollution control permit for a facility; and
- (E) Allows for a change in ownership or operational control of a source where the director 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 permittees has been submitted to the executive secretary.

(2) “AP-42” means the most recent edition, supplements, and appendices of USEPA’s Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources.

(3) “Applicable requirement” is defined as follows:

(A) If an air pollution emission source is a federal oversight source, “applicable requirement” means all of the following as they apply to emissions units in the air pollution emission source (including requirements that have been promulgated or approved by USEPA through rulemaking at the time of issuance but have future-effective compliance dates):

(i) Any standard or other requirement provided for in the applicable state implementation plan approved or promulgated by USEPA, including any revision to that plan promulgated in 40 CFR Part 52;

(ii) Any term or conditions of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Clean Air Act;

(iii) Any standard or other requirement under section 111 of the Clean Air Act, including section 111(d);

(iv) Any standard or other requirement under section 112 of the Clean Air Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(v) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Clean Air Act;

(vi) Any standard or other requirement governing solid waste incineration, under section 129 of the Clean Air Act;

(vii) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Clean Air Act;

(viii) Any standard or other requirement for tank vessels under section 183(f) of the Clean Air Act;

(ix) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Clean Air Act;

(x) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Clean Air Act, unless the USEPA Administrator has determined that such requirements need not be contained in an air pollution control permit; and

(xi) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Clean Air, but only as it would apply to temporary sources pursuant to section 504(e) of the Clean Air Act.

(B) For all other air pollution emission sources, “applicable requirement” shall mean all of the following as they apply to emissions units in the air pollution emission source:

(i) Any NAAQS or American Samoa air quality standard;

(ii) The application of best available control technology to control those pollutants subject to any NAAQS or American Samoa air quality standard, but only as best available control technology would apply to new or proposed air pollution emission sources and modifications to air pollution emission sources that have the potential to emit or increase emissions above significant amounts considering any limitations, enforceable by the Commission, on the air pollution source to emit a pollutant; and

(iii) Any standard or other requirement provided in these Standards and Regulations.

(4) “Federal oversight source” means an air pollution emission source that does not qualify for a source category exemption under 40 CFR § 70.3(b) and that is:

(A) A major source;

(B) Subject to standards of performance or other requirement of section 111 of the Clean Air Act;

(C) A non-major source of hazardous air pollutants subject to an emission standard or other requirement for hazardous air pollutants pursuant to Section 112 of the Clean Air Act or Part V of these Standards and Regulations, except those sources solely subject to regulations or requirements pursuant to Section 112(r) of the Clean Air Act.

(5) “Insignificant sources” means any air pollution emission sources that can be classified as insignificant sources - type I or insignificant sources - type II.

(6) “Insignificant sources - type I” means any air pollution emission source that is not a federal oversight source and includes only the following sources of air pollutants:

(A) Any storage tank, reservoir or other container of capacity equal to or less than forty thousand gallons storing volatile organic compounds, except those storage tanks, reservoirs, or other containers subject to any standard or other requirement pursuant to Sections 111 and 112 of the Clean Air Act;

(B) Other than smoke house generators, fuel burning equipment with a heat input capacity less than one million BTU per hour, except where the total heat input capacity of all individually exempted equipment exceeds five million BTU per hour when operated within the facility and controlled by a single owner or operator;

(C) Steam generators, steam superheaters, water boilers, or water heaters, which have a heat input capacity of less than five million BTU per hour, and are fired exclusively with natural, synthetic, or liquefied petroleum gas, or any combination of these;

(D) Kilns used for firing ceramic ware heated exclusively by natural gas, electricity, liquid petroleum gas, or any combination of these and have a heat input capacity of five million BTU per hour or less;

(E) Standby generators used exclusively to provide electricity, standby sewage pump personnel and the public, all of which are used only during power outages, emergency

equipment maintenance and testing, and are fired exclusively by natural or synthetic gas; or liquefied petroleum gas; or fuel oil No. 1 or No. 2; or diesel fuel oil No. 1D or No. 2D;

(F) Paint spray booths;

(G) Welding booths (if there are more than five at the facility); and

(H) Portable diesel or gasoline fired industrial equipment less than two hundred horsepower in size which are used during power outages or intermittently for maintenance and repair purposes (if there are more than five at the facility);

(7) “Insignificant sources- type II” means any air pollution emission source that is not a federal oversight source and includes only the following sources of air pollutants:

(A) Welding booths (if less than five at a facility);

(B) Portable diesel or gasoline fired industrial equipment less than two hundred horsepower in size which are used during power outages or intermittently for maintenance and repair purposes (if less than five at the facility);

(C) Hand held equipment used for buffing, polishing, carving, cutting, drilling, machining, sanding, sawing or surface grinding, provided reasonable precautions are taken to prevent particulate matter from becoming airborne. Reasonable precautions include the use of dust collection systems, dust barriers, or containment systems;

(D) Laboratory equipment used exclusively for chemical and physical analyses;

(E) Containers, reservoirs, or tanks used exclusively for dipping operations for coating objects with oils, waxes, or greases where no organic solvents, diluents, or thinners are used; or dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents;

(F) Closed tumblers used for cleaning or deburring metal products without abrasive blasting, and pen tumblers with batch capacity of one thousand pounds or less.

(G) Ocean going vessels, except for ocean-going vessels subject to any standard or other requirement for the control of air pollution from outer continental shelf sources pursuant to 40 CFR Part 55;

(H) Fire water system pumps dedicated for fire-fighting and to maintain fire water system pressure, and fired exclusively by natural or synthetic; or liquefied petroleum gas; or fuel oil No. 1 or No. 2; diesel fuel No. 1D or No. 2D;

(I) Smoke generating systems used exclusively for training in government or certified fire fighting training facilities;

(J) Mobile internal combustion engines;

(K) Diesel fired portable ground support equipment exclusively to start aircraft or provide temporary power to aircraft prior to start-up;

(L) Fuel burning equipment which is used in a private dwelling or for space heating, other than boilers or hot furnaces;

(M) Ovens, stoves, or grills used solely for the purpose of preparing food for human consumption operated in private dwellings, restaurants, or stores;

(N) Stacks or vents to prevent escape of sewer gasses through plumbing traps;

(O) Air conditioning or ventilation systems not designed to remove air pollutants generated by ore released from equipment, and that do not involve the open release or venting of CFCs into the atmosphere; and

(P) Woodworking shops with a sawdust collection system.

(8) “Major source” means an air pollution emission source, or a group of air pollution emission sources that are located on one or more contiguous properties or adjacent

properties, and are under common control or command of the same person or persons, belonging to a single major industrial grouping (i.e., all have the same two-digit Standard Industrial Classification Code) and that emits or has the potential to emit:

(A) Any hazardous air pollutant, except radionuclides, in the aggregate of ten tons per year or more including fugitive emissions, or twenty-five tons per year or more of any combination including fugitive emissions, or such lesser quantity as the USEPA Administrator may establish by rule;

(B) One hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act or these Standards and Regulations. Fugitive emissions from the air pollution emission source shall be considered in determining whether the source is major, if it belongs to one of the following categories of air pollution emission 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 BTU 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 BTU per hour heat input; and
  - (xxvii) All other air emission source categories regulated by a standard promulgated pursuant to Section 111 or 112 of the Clean Air Act, but only with respect to those air pollutants that have been regulated for that category; or
- (A) For radionuclides, major source shall have the meaning specified by the USEPA Administrator by rule.

(B) In nonattainment areas, a major stationary source as defined in part D of title I of the Clean Air 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 USEPA Administrator has made a finding, under section 182(f)(1) or (2) of the Clean Air Act, that requirements under section 182(f) of the Act do not apply;
- (ii) For ozone transport regions established pursuant to section 184 of the Clean Air Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;
- (iii) For carbon monoxide nonattainment areas:
  - (A) That are classified as “serious,” and
  - (B) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and
- (iv) For particulate matter (PM-10) nonattainment areas classified as “serious,” sources with the potential to emit 70 tpy or more of PM-10.

(9) “Modification” means a physical change in or change in the method of operation of an air pollution emission source which requires a change to a permit. Routine maintenance, repair and replacement shall not be considered a modification.

(10) “Pollution prevention” means the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source.

(11) “Significant modification” means a modification of a federal oversight source which:

- (A) Increases the emissions of any air pollutant above the permitted emission limits;
- (B) Results in significant increase in emissions of any air pollutant;
- (C) Violates an applicable requirement;
- (D) Involves a relaxation or changes other than administrative permit amendments to existing monitoring requirements or reporting or recordkeeping requirements in the permit. Any change to the existing monitoring, reporting, or recordkeeping requirements that reduces the enforceability of the permit is considered a significant change;
- (E) Requires or changes a case-by-case determination of an emission limitation or other standard, or a visibility or increment analysis;
- (F) Is a modification pursuant to any provision of Title I of the Clean Air Act.

#### **24.0521. Program Applicability.**

(a) Except as provided in subsection (b), no federal oversight source or any other air pollutant emission source with potential emissions greater than 1 ton per year of any air pollutant or more than 0.1 ton per year of any hazardous air pollutant may begin construction or continue operation without first obtaining a valid stationary air pollution source permit from the Commission.

(b) If an air pollution emission source is also a major source emitting HAPs, the owner or operator of such source shall obtain an air pollution control permit from the USEPA Administrator under the provisions of 40 CFR Part 71. A copy of this permit shall be furnished to the Commission prior to the commencement or continuation of construction, reconstruction, modification, relocation or operation of the source.

(c) Stationary air pollution source permits issued by the Commission shall remain valid past the expiration date and the air pollution emission source shall not be in violation for failing to have a stationary air pollution source permit until the Commission has issued or denied the renewal of such permit, provided:

(1) In the six to eighteen months prior to permit expiration, a complete renewal application has been submitted and the owner or operator acts consistently with the permit previously granted, and the application on which it was based, and all plans, specifications, and other information submitted as part of the application; and

(2) The owner or operator has submitted to the Commission within the specified deadlines all requested additional information deemed necessary to evaluate or take final action on the renewal application as described in section 24.0524.

(d) The air pollution control permit shall not constitute, nor be construed as an approval of the design of the air pollution emission source. The permit shall be issued in accordance with these Standards and Regulations and it is the responsibility of the applicant to ensure compliance with all applicable requirements in the construction of any air pollution emission source.

**24.0522. General conditions for issuing a permit.**

(a) The Commission may issue a stationary air pollution source permit if the owner or operator of an air pollution emissions source can show to the satisfaction of the Commission that all applicable provisions of these Standards and Regulations will be complied with, including, as applicable:

- (1) The maintenance and attainment of an NAAQS and any American Samoa ambient air quality standard;
- (2) General prohibitions and standards (and regulations specific to that source) pursuant to Part II of these standards and regulations;
- (3) Requirements for air pollution emission sources pursuant to Part III of these standards and regulations;
- (4) Applicable Standards of Performance for New Stationary Sources (40 CFR Part 60), National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61), or any other federal standard or other requirement established pursuant to the Clean Air Act.
- (5) Applicable standards of performance for air pollution emission sources pursuant to Part IV of these Standards and Regulations; and
- (6) Requirements for hazardous air pollutant sources pursuant to Part V;

(b) Air pollution control permits, including permit renewals, and permit amendments for modifications shall be issued only if all of the following conditions are met:

- (1) The Commission has obtained enough information to determine that the air pollution emission source will comply with all of the requirements of subsection (a);
- (2) The executive secretary has provided an opportunity for all applicable public participation requirements pursuant to section 24.0539;
- (3) the permit provides for compliance with all applicable requirements and contains applicable terms and conditions pursuant to 24.0528; and
- (4) All applicable requirements for transmission of information to USEPA and USEPA oversight have been satisfied pursuant to 24.0532 and 24.0533.

**24.0523. Holding, transfer, and cancellation of permit.**

- (a) Each stationary air pollution source permit, or a copy thereof, shall be maintained at or near the air pollution emission source for which the permit was issued and shall be made available for inspection upon the executive secretary's request.
- (b) No person shall willfully deface, alter, forge, counterfeit, or falsify a stationary air pollution source permit.
- (c) All permits issued pursuant to these Standards and Regulations shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one piece of equipment to another.
- (d) All permits issued pursuant to these Standards and Regulations shall not be transferable, whether by operation of law or otherwise, from one person to another without the approval of the Commission.
- (e) Within thirty days of permanent discontinuance of the operation of any permitted air pollution emission source, the discontinuance shall be reported in writing to the Commission by a responsible official of the source.

**24.0524. Stationary air pollution source permit application.**

- (a) Except as stated in subsection (b), applications for stationary air pollution source permits shall be submitted to the director on forms furnished by the Commission. A copy of this form is appended hereto and incorporated by reference herein. The applicant shall further submit sufficient information to enable the Commission to make a decision on the application and to determine the fee requirements specified in 24.0540 and 24.0541.
- (b) For air pollution emission sources required to obtain a federal operating permit under the provisions of 40 CFR Part 71, owners and operators may submit a copy of the federal permit application to the Commission in place of forms furnished by the Commission. The owner or operator must include with the application a form to calculate annual fees pursuant to section 24.0541. All signatures required on the application forms must be original signatures.
- (c) Applications for initial stationary air pollution source permits shall include the following information:
  - (1) Identifying information about the stationary air pollution emission source, including name address, and phone number of:
    - (A) The company (the plant if different from the company);
    - (B) The owner and the owner's agent;
    - (C) The plant site manager or other contact; and
    - (D) The person responsible for recordkeeping, and the location where required records are to be kept.

- (2) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules to the extent needed to determine or regulate emissions; specifications and drawings showing the design of the source and plant layout; and a description of all processes and products by Standard Industrial Classification Code;
- (3) Maximum emissions rates, including fugitive emissions, of all regulated and hazardous air pollutants and all air pollutants for which the source is major from each emissions unit. Emissions rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. All supporting emissions calculations and assumptions shall also be provided;
- (4) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the source, and to the extent of available information, an estimate of emissions before and after controls;
- (5) Current operational limitations or work practices, or for air pollution emission sources that have not yet begun operations, such limitations or practices which the owner or operator of the source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;
- (6) All calculations and assumptions upon which paragraphs (2), (4) and (5) are based;
- (7) A copy of any/all air pollution permits issued by the Commission or USEPA;
- (8) A compliance plan and compliance certification pursuant to section 24.0528;
- (9) Citation and description of all applicable requirements, a description of or reference to any applicable test method for determining compliance with each applicable requirement, and an explanation of all proposed exemptions from any applicable requirement.
- (10) For proposed or new major sources or significant modifications:
  - (A) A detailed schedule for construction of the source or modification;
  - (B) For existing sources, an assessment of the ambient air quality impact of the air pollution emission source. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS;
  - (C) For new sources and significant modifications which increase the emissions of any air pollutant or result in the emission of any air pollutant not previously emitted, an assessment of the ambient air quality impact of the new source or significant modification, with the inclusion of any available background air quality data. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS; and
  - (D) An explanation of all proposed exemptions from any applicable requirement.
- (11) At the request of the Commission, the following information must also be submitted:
  - (A) A risk assessment of the air quality related impacts caused by the source or significant modification to the surrounding environment;
  - (B) Results of source emission testing, ambient air quality monitoring, or both;
  - (C) Information on other available control technologies; and
  - (D) Other information deemed necessary to make a decision on the application or needed to implement and enforce other applicable requirements of the Clean Air Act or these Standards and Regulations, or to determine the applicability of such requirements; and

(12) A certification by a responsible official of truth, accuracy, and completeness of all submitted documents.

(d) Applications for renewals of stationary air pollution source permits are subject to the same requirements as an initial application. If the source is a federal oversight source, applications for renewal shall be submitted at least six (6) months prior to permit expiration. For all other air pollution emission sources, renewal applications are due 60 days prior to permit expiration. Late applications shall be subject to penalties pursuant to section 24.0542(d). Applicants shall submit a statement certifying whether any changes have been made in the design or operation of the source as proposed in the initial and any subsequent permit applications. If changes have occurred or are proposed, the applicant shall provide a description of those changes such as work practices, operations, equipment design, and monitoring procedures, including the affected applicable requirements associated with the changes and the corresponding information to determine the applicability of all applicable requirements. If the application for renewal has not been approved or denied within the time specified in subsection (j), the stationary air pollution source permit and all its terms and conditions shall remain in effect and not expire until the application for renewal has been approved or denied, provided the applicant has submitted any additional information within the reasonable deadline specified by the Commission.

(e) If an air pollution emission source includes insignificant sources - type I or insignificant sources - type II, the insignificant sources shall be exempt from the permit application requirements of subsection (a), provided:

(1) No such exemption interferes with the imposition of any applicable requirement or the determination of whether an air pollution emission source is subject to an applicable requirement; and

(2) The owner or operator can demonstrate to the director that the source meets the size, emission level, or production rate criteria specified in the definition of insignificant source.

(3) Insignificant sources - type I shall be identified in the air pollution control permit application. Insignificant sources - type II need not be identified in the air pollution control permit application. The Commission may request additional information on any insignificant source to determine the applicability of a fee requirement, or to impose any applicable requirement, or to determine the fee requirement specified in section ASAC 24.0534.

(f) Applications for modifications of stationary air pollution source permits are subject to the same requirement as an initial application. Applicants shall submit a description of the modification, identifying all proposed changes, including any changes to the source operations, work practices, equipment design, source emissions or any monitoring, record keeping, and recording procedures. Each change from the permit application for the existing stationary air pollution source permit shall be identified on the application for the permit modification.

- (g) The Commission shall not continue to act upon or consider an incomplete application. An application shall be determined to be complete only when all of the following have been complied with:
- (1) All information required or requested on the application form and pursuant to subsections (a) through (f);
  - (2) All documents requiring certification have been certified pursuant to section 24.0504;
  - (3) All applicable fees pursuant to sections 24.0540 through 24.0543 have been submitted; and
  - (4) The executive secretary has certified that the application is complete.
- (h) The executive secretary shall notify the applicant in writing whether the application is complete within sixty (60) days of receipt of the application. Unless the executive secretary requests additional information or notifies the applicant of incompleteness within sixty (60) days after receipt of an application, the application shall be deemed complete.
- (i) During the processing of an application that has been determined or deemed complete, if the executive secretary determines that additional information is necessary to evaluate or take final action on the application, the executive secretary may request such information in writing and set a reasonable deadline for a response.
- (j) If an air pollution emission source is a federal oversight source, the Commission shall approve or deny an application for a stationary air pollution source permit within twelve (12) months after receipt of a complete application for an existing source, and within ninety (90) days after receipt of a complete application for a non-significant modification. For all other air pollution emission sources, the Commission shall approve, conditionally approve, or deny an application for a permit within twelve (12) months after receipt of a complete application for a new source, and within 90 days after receipt of a complete application for an existing source or modification.
- (k) A stationary air pollution source permit for a new source or a significant modification shall be approved only if the Commission determines that the construction and operation of the new source or significant modification will be in compliance with all applicable requirements.

**24.0525. Submittal of initial permit applications- deadlines.**

(a) Upon program approval, all owners or operators of existing air pollution emission sources shall submit to the Commission a complete initial permit application within twelve (12) months of program approval. Owners or operators of such sources who applied for a stationary air pollution source permit prior to program approval, but have not yet received a permit, shall also submit a complete and timely permit application within twelve (12) months of program approval. An owner or operator shall not commence or continue construction, reconstruction, modification, relocation or operation without a permit issued under these standards and regulations unless written approval is granted by the Commission.

(b) Upon program approval, all owners or operators of new or proposed air pollution emission sources who have not previously applied for a stationary air pollution source permit shall submit a complete permit application within twelve (12) months of program approval. A stationary air pollution source permit shall be obtained prior to commencement of construction, reconstruction, modification, relocation or operation unless written approval is granted by the Commission.

(c) All existing stationary air pollution source permits shall remain valid past the expiration date for a period not to exceed 15 months until a new stationary air pollution source permit is issued under these standards and regulations.

(d) Requests for an extension of time to file a permit application shall be made at least thirty (30) days prior to the required submission date and shall include the following information:

- (1) Justification for the extension, including a showing that reasonable effort and resources have been and are being utilized in the preparation of the application;
- (2) A description of the problems being encountered and the reasons for the delays in meeting the application deadline;
- (3) The current status of the stationary air pollution source permit application; and
- (4) The projected completion date of stationary air pollution source permit application.

If the Commission disapproves an extension for initial application submittal, the owner or operator shall meet the scheduled submission date. Under no circumstances shall the deadline for submitting an initial stationary air pollution source permit application be extended more than 15 months past program approval.

(e) All stationary air pollution source permit applications, compliance plans, compliance certifications, and filing fees shall be submitted in accordance with sections 24.0524, 24.0527, and 24.0540 through 24.0543.

#### **24.0526. Duty to supplement or correct permit applications.**

An applicant for a stationary air pollution source permit who fails to submit any relevant facts or who has submitted incorrect information in any 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 the release of the draft permit.

#### **24.0527. Compliance plans and certifications.**

A compliance plan and compliance certification shall be submitted with each permit application, at such times as requested by the Commission and as otherwise required by subsections (a)(1) and (a)(2) of this rule.

(1) The compliance plan required by this rule shall be submitted by the owner or operator of an air emissions source and shall include at a minimum the following information:

(A) A description of the compliance status of the existing air pollution emission source or proposed source with respect to the applicable requirements, and the following statement or description and compliance schedule for expeditiously achieving compliance, as applicable:

(i) For applicable requirements with which the source is in compliance, a statement that the source is in compliance with all applicable requirements and will continue to comply with such requirements;

(ii) For applicable requirements which become applicable during the permit term, a statement that the source will meet all such applicable requirements on a timely basis. The statement shall include documentation on the proposed method the owner or operator will use to obtain compliance and a compliance schedule demonstrating that the source will expeditiously achieve compliance with such applicable requirement by the date specified in the applicable requirement. A detailed schedule for compliance shall be provided if required by the applicable requirement.

(iii) For applicable requirements with which the source is not in compliance, a narrative description of how the source will achieve compliance and a detailed compliance schedule containing specific milestones of remedial measures to expeditiously achieve compliance. The compliance schedule shall supplement and shall not sanction noncompliance with the applicable requirements on which the schedule is based.

(B) If a compliance plan is to remedy a violation, a progress report certified pursuant to section 24.0504 shall be submitted no less frequently than annually and shall include:

(i) Dates for achieving the activities, milestones, or compliance and dates when such activities, milestones or compliance were achieved;

(ii) 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.

(2) The compliance certifications required by this rule shall be submitted annually and with each permit application by a responsible official of the emissions source. The

responsible official shall certify that the compliance certification is true, accurate and complete. Such certifications shall include:

(A) For certifications submitted with permit applications, a detailed description of the methods to be used in determining compliance with all applicable requirements and a statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements, including the requirements of Section 114(a)(3) of the Clean Air Act or any applicable enhanced monitoring and analysis provisions of Section 504(b) of the Clean Air Act;

(B) For annual compliance certifications and those requested by the Commission, the identification of each term or condition of the permit that is the basis of the certification; the source's compliance status currently and over the reporting period; a description of the methods used for determining compliance status currently and over the reporting period; and a compliance plan submitted in accordance with subsection (1) of this section.

#### **24.0528. Permit content.**

The Commission shall consider and incorporate the following elements in all stationary air pollution source permits, as applicable:

(1) Quantifiable emissions limitations and standards, including operational requirements and limitations, to ensure compliance with all applicable requirements at the time of issuance;

(2) Requirements regarding fugitive emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of "major source";

(3) The origin of and authority for each term or condition and any differences in form as compared to the applicable requirement upon which the term or condition is based;

(4) The permit term pursuant to section 24.0529;

(5) Requirements for the installation of devices, at the expense of the owner, for the measurement or analysis of source emissions or ambient concentration of air pollutants;

(6) The requirement for source emissions tests or alternative methodology to determine compliance with all terms and conditions of the stationary air pollution source permit, and applicable requirements. Source emission tests conducted or alternative methodology used shall be at the expense of the owner or operator;

(7) All monitoring and related recordkeeping and reporting requirements to assure compliance with all terms and conditions of the permit. Each stationary air pollution source permit shall address the following with respect to monitoring, record keeping, and reporting:

(A) All reporting, emissions monitoring and analysis procedures, or test methods required pursuant to the applicable requirements, including any procedures or methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Clean Air Act;

(B) If the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring, periodic monitoring or recordkeeping sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit;

- (C) Monitoring results expressed in units, averaging periods, and other statistical conventions consistent with the applicable requirements;
- (D) Requirements concerning the use, maintenance, and installation of monitoring equipment. The installation, operation, and maintenance of the monitoring equipment shall be at the expense of the owner or operator;
- (E) Appropriate monitoring methods;
- (F) Monitoring records including:
  - (i) Place as defined in the permit, date, and time of sampling or measurement;
  - (ii) Dates the analyses were performed;
  - (iii) The name and address of the company or entity that performs analyses;
  - (iv) Analytical methods or techniques used;
  - (v) Analyses results; and
  - (vi) Operating conditions during the time of sampling or measurement;
- (G) Other records including support information, such as calibration and maintenance records, original strip chart recordings or computer printouts for continuous monitoring instrumentation, and all other reports required by the Commission;
- (H) A requirement for the 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 for continuous monitoring instrumentation and copies of all reports required by the permit;
- (I) A requirement for submission of reports of any required monitoring at least every six months. Deviations from the permit requirements shall be clearly identified and addressed in these reports;
- (J) A requirement for prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The term “prompt” shall be delineated on a permit-by-permit basis in relation to the degree and type of deviation likely to occur and the applicable requirements; and
- (K) provisions for the owner or operator to annually report, in writing, emissions of hazardous air pollutants;
- (8) Pollution prevention audits and the implementation of pollution prevention measures to ensure that emissions are reduced or eliminated when feasible;
- (9) General provisions including:
  - (A) A statement that the owner or operator shall comply with the terms and conditions of its permit and that any permit noncompliance constitutes a violation of these Standards and Regulations and, for all federally enforceable terms or conditions, the Clean Air Act, and is grounds for enforcement action, permit termination, suspension, reopening, or amendment, or for denial of a permit renewal application;
  - (B) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit;
  - (C) A statement that 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 to maintain compliance with the terms and conditions of the permit;
  - (D) A statement that the permit may be terminated, suspended, reopened, or amended for cause pursuant to section 24.0538. The filing of a request by the permittee for a permit

termination, suspension, reopening, or amendment, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;

(E) A statement that the permit does not convey any property rights of any sort, or any exclusive privilege;

(F) A provision that the owner or operator shall notify the Commission in writing of the anticipated date of initial start-up for each emission unit of a new air pollution emission source or significant modification not more than sixty days or less than thirty days prior to such date. The Commission shall also be notified in writing of the actual date of construction commencement and start-up within fifteen days after these dates;

(G) A statement that the owner or operator shall furnish in a timely manner any information or record requested in writing by the Commission to determine whether cause exists for terminating, suspending, reopening, or amending the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish copies of records required to be kept by the permit.

(H) A requirement that a copy of applicable correspondence or records submitted to the Commission be provided to USEPA pursuant to section 24.0532.

(I) A provision for the designation of confidentiality of any records to be afforded confidentiality pursuant to section 24.0505.

(J) A requirement that the owner or operator shall submit fees in accordance with sections 24.0540 and 24.0541;

(K) Certification requirements pursuant to section 24.0504.

(L) A requirement that the owner or operator allow the director or an authorized representative, at least once per calendar year or at any other time upon presentation of credentials or other documents required by law:

(i) To enter the owner or operator's premises where a source is located or emission-related activity is conducted, or where records must be kept under the conditions of the permit and inspect at reasonable times all facilities, equipment, including monitoring and air pollution control equipment, practices, operations, or records covered under the terms and conditions of the permit and request copies of records or copy records required by the permit; and

(ii) To sample or monitor at reasonable times substances or parameters to assure compliance with the permit or applicable requirements;

(10) Compliance plan and compliance certification submittal requirements pursuant to section 24.0522.

(11) other provisions to assure compliance with all applicable requirements; and

(12) Any other provision the Commission imposes to further limit the construction and operation of the source. These conditions may include restrictions, control requirements, or performance standards normally reserved for air pollution emission sources with larger capacities than the air pollution emission source being permitted. In determining whether to impose more restrictive conditions, the Commission shall consider the relevant circumstances of each individual case, including the availability of a reasonable control technology, cleaner fuels, or a less polluting operating process; the consideration of the existing air quality and the resulting degradation; the protection of the public health, welfare and safety; and any information, assumptions, limitations, or statements made in conjunction with a permit application.

**24.0529. Permit Term or Duration.**

An air pollution control permit shall be issued or renewed for a fixed term of five years unless the owner or operator of the source requests a shorter term, or the Commission determines that a shorter term is warranted.

**24.0530. Inspections.**

(a) Every source required to obtain a permit pursuant to these Standards and Regulations shall be subject to regular inspections at least every six months for compliance with all applicable requirements, these rules, and the terms and conditions of a permit. Such inspections shall be conducted by any duly authorized officer, employee or representative of the Commission and shall take place at any reasonable time. No person shall refuse entry or access to any authorized representative of the executive secretary who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such inspection.

(b) Inspections may include emissions testing, monitoring, sampling and on-site inspections of facilities, equipment, practices, operations, or records required to be maintained according to the terms and conditions of an owner or operator's permit. Emissions sources found to be in violation of an applicable requirement, these Standards and Regulations, or any terms and conditions of a stationary air pollution source permit shall immediately take all appropriate actions to achieve compliance and shall be subject to all enforcement penalties and remedies provided by, or incorporated by reference in, these Standards and Regulations.

**24.0531. Federally Enforceable Terms and Conditions.**

Terms and conditions included in a stationary air pollution source permit, including any provision designed to limit a source's potential to emit, are federally enforceable unless such terms, conditions, or requirements are specifically designated as not federally enforceable. Terms and conditions in a stationary air pollution source permit related to applicable requirements (including limits on a source's potential to emit) shall in all cases be federally enforceable. Those terms and conditions which are left undesignated shall become federally enforceable upon permit issuance provided the USEPA Administrator does not object during the 45-day review pursuant to section 24.0533.

**24.0532. Transmission of information to the USEPA.**

- (a) If the air pollution emission source is a federal oversight source:
- (1) The executive secretary shall submit to the USEPA Administrator a copy of each proposed and final stationary air pollution source permit, including administrative permit amendments;
  - (2) The owner or operator shall simultaneously submit to the USEPA Administrator a copy of all stationary air pollution source permit applications, including any applications for renewals and amendments reflecting modifications submitted to the Commission;
  - (3) By agreement with the USEPA Administrator or pursuant to federal regulation, the executive secretary may waive the requirements of this section, or submit summaries for specific categories of non-major air pollution emission sources.
- (b) For all other stationary air pollution sources, the Commission may at any time require the owner or operator to submit to the USEPA Administrator a copy of any permit compliance certification, or records required to be kept under the permit.
- (c) The Commission shall maintain records on all air pollution control permit applications, compliance plans, proposed and final permits, and other relevant information for a minimum of five years.

**24.0533. USEPA oversight.**

If an air pollution emission source is a federal oversight source, the Commission shall abide by the following practices and restrictions:

- (1) Upon program approval, the Commission shall not issue a stationary air pollution source permit, permit renewal, or permit amendment for a non-minor modification, if the USEPA Administrator objects to its issuance in writing within forty-five days of receipt of the proposed permit and all necessary supporting information.
- (2) Upon program approval, the Commission shall submit to the USEPA Administrator an amended proposed stationary air pollution source permit within 180 days after receipt of any written objection from the USEPA Administrator. If the Administrator's objections are not resolved within 180 days, USEPA shall issue a permit under 40 CFR Part 71.

**24.0534. Administrative permit amendment.**

(a) The Commission, on its own initiative or upon written request from the owner or operator of a stationary air pollution emissions source, may issue an administrative permit amendment.

(b) Except for a request to consolidate two or more air pollution control permits into one or to change ownership or operation control, an owner or operator requesting an administrative permit amendment may make the requested change immediately upon submittal of the request.

(c) Within sixty days of receipt of a written request for an administrative permit amendment, the Commission shall take final action on the request and may amend the permit without providing notice to the public provided the director designates any such permit amendments as having been made pursuant to this section.

(d) For federal oversight sources, the Commission shall submit a copy of the administrative permit amendment to USEPA.

**24.0535. Permit modifications.**

(a) Upon receipt of an application for a permit modification which does not qualify as an administrative permit amendment pursuant to section 24.0534 the Commission shall process the application according to whether the requested permit modification is minor or non-minor.

(b) In determining whether a requested modification is minor or non-minor, the Commission shall use the following criteria:

(1) Minor permit modifications are those which:

(A) Do not violate any applicable requirement;

(B) Do not involve non-minor changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(C) 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;

(D) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject, including:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the federal Clean Air Act, 42 U.S.C. 7401 to 7515; and

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

(E) Are not required by these standards and regulations to be processed as a non-minor modification;

- (F) Are not modifications under any provision of title I of the Clean Air Act; Notwithstanding subparagraphs (A) through (F) of this section, minor permit modifications 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 modifications procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by USEPA.
- (2) Non-minor permit modifications are those which do not qualify as minor permit modifications or administrative permit amendments and which:
- (A) involve any relaxation of permit monitoring terms and conditions;
  - (B) involve any relaxation of reporting or recordkeeping terms and conditions;
  - (C) involve violations of any applicable requirement(s); or
  - (D) involve any relaxation of permit emissions standards or limitations.

#### **24.0536. Permit modification procedures.**

- (a) Applications for minor permit modifications shall be processed as follows:
- (1) An application for a minor permit modification shall be submitted to the Commission and shall include the following:
    - (A) A description of the change requested, the emissions resulting from the change, and any applicable requirements that will apply if the change occurs;
    - (B) The source's suggested draft permit;
    - (C) Certification by a responsible official, consistent with section 24.0504 of these regulations, that the proposed modification meets the criteria for use of the minor permit modification procedures and a request that such procedures be used; and
    - (D) Completed forms for the permitting authority to use to notify USEPA as required pursuant to section 24.0532.
  - (2) Within five working days of receipt of a complete permit modification application, the ASEP shall promptly notify USEPA of the requested modification;
  - (3) The Commission shall not issue a final permit modification until USEPA has reviewed the modification application for 45 days or until USEPA has notified the Commission that it will not object to issuance of the requested modification, whichever comes first. The Commission shall, within 90 days of receipt of a completed permit modification application or 15 days of USEPA's 45-day review period,
    - (A) issue the permit modification as proposed;
    - (B) Deny the permit modification application;
    - (C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the non-minor modification procedures; or
    - (D) Revise the draft permit modification and transmit to USEPA the new proposed permit modification as required by these regulations.
  - (4) The applicant for a minor permit modification may make the change(s) proposed in its application immediately after it files its application. After making such change(s) and until the Commission takes any of the actions specified in subsections (a)(1) - (a)(3), the applicant must comply with both the applicable requirements governing the change and the proposed permit terms and conditions, but the source need not comply with the

existing permit terms and conditions it seeks to modify. However, if the applicant fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against.

(b) Applications for permit modifications deemed non-minor shall meet all of the requirements set forth in sections 24.0522, 24.0525, 24.0526, 24.0538 as they apply to permit issuance and to permit renewal. Final permit modifications shall issue within nine (9) months of the receipt by the Commission of a complete application.

**24.0537. Emergency Provision.**

(a) An emergency constitutes an affirmative defense to any action brought for noncompliance with any technology-based emission limitation, if it can be demonstrated to the executive secretary through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and the owner or operator of the air pollution emission source can identify the cause or causes of the emergency;

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

(3) During the period of the emergency, the owner or operator of the air pollution emission source took all reasonable steps to minimize levels of emission that exceeded the emission limitations or other requirements in the stationary air pollution source permit; and

(4) The owner or operator of the air pollution emission source submitted notice of the emergency to the executive secretary within two working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken. Such notice shall satisfy the prompt reporting of deviations pursuant to section 24.0506;

(b) In any proceedings for enforcement action, the owner or operator of the air pollution emission source seeking to establish the occurrence of an emergency has the burden of proof.

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

**24.0538. Permit termination, suspension, reopening, and amendment.**

(a) The Commission, on its own motion or on the petition of any person, may terminate, suspend, reopen, or amend any permit if, after affording the permittee an opportunity for a hearing in accordance with section 24.0514, the Commission determines that:

- (1) the permit contains a material mistake made in establishing the emissions limitations or other requirements of the permit;
- (2) Permit action is required to assure compliance with the requirements of the Clean Air Act; the Environmental Quality Act, or these Standards and Regulations;
- (3) Permit action is required to address additional requirements of the Clean Air Act; the Environmental Quality Act, or these Standards and Regulations;
- (4) There is a violation of any condition of the permit;
- (5) The permit was obtained by misrepresentation or failure to disclose fully all relevant facts;
- (6) The source is not constructed or operated in accordance with the application for the air pollution control permit and any information submitted as part of the application;
- (7) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
- (8) More frequent monitoring or reporting by the permittee is required; or
- (9) Such is in the public interest. In determining the public interest, the Commission shall consider the environmental impacts of the proposed action, any unavoidable adverse environmental impacts, alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, any irreversible and irretrievable commitments of resources which would be involved in the proposed action, and any other factors which the Commission shall prescribe by rule; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(b) The Commission shall reopen and amend a permit if it determines that any one of the following circumstances exists:

- (1) Additional applicable requirements pursuant to the Clean Air Act or these Standards and Regulations become applicable to a major air pollution emission source with a remaining permit term of three or more years. Such permit reopening shall be completed not later than eighteen months after promulgation or adoption of the applicable requirement. No such permit reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the expiration date of the original permit or any of its terms and conditions has been extended pursuant to section 24.0525;
- (2) the permit contains a material mistake or inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or
- (3) The permit must be terminated, suspended, or amended to assure compliance with the applicable requirements.

(c) Procedures to reopen and amend an air pollution control permit shall be the same as procedures which apply to initial permit issuance in accordance with section 24.0525 and

shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(d) On the reopening of a permit the Commission shall provide written notification to the permittee indicating the basis for reopening at least thirty days prior to the reopening date, except that the Commission may provide a shorter time period if it is determined that immediate action on the reopening is required to prevent an imminent peril to public health and safety or the environment;

(e) If requested by the executive secretary, the owner or operator of an air pollution emission source shall submit a permit application or information related to the basis of the permit reopening or those provisions affected by the reopening within thirty days of receipt of the permit reopening notice. An extension of the application submittal may be granted by the executive secretary if the owner or operator can provide adequate written justification for such an extension.

(f) Upon program approval, if the USEPA Administrator notifies the Commission of any cause to terminate, suspend, reopen, or amend a permit issued to a federal oversight source, the Commission shall submit to the USEPA Administrator within 100 days of receipt of such written notification, or within such other times as required by the USEPA, a proposed determination of termination, suspension, reopening, or amendment as appropriate.

(g) Upon program approval, if the USEPA Administrator objects to the Commission's proposed determination in subsection (f), the Commission shall terminate, suspend, reopen, or amend the permit in accordance with the USEPA Administrator's objection within 180 days from receipt of the written objection specified in subsection (f). If the Commission fails to reissue the permit within this 180 days, USEPA will terminate, modify, or revoke and reissue the permit under 40 CFR Part 71 after providing the permittee and the public with notice and opportunity for comment.

#### **24.0539. Public Participation.**

(a) If the air pollution emission source is a federal oversight source, the executive secretary shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on draft permits for all permits except administrative permit amendments and permit amendments reflecting minor modifications. Any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted. The executive secretary shall have discretion whether to grant a public hearing.

(b) For all other air pollution emission sources, the executive secretary, at his sole discretion when considering an application for any stationary air pollution source permit, except administrative permit amendments, may provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment if the executive secretary believes that public comment would aid in the Commission's decision. If a public comment period is provided, any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted.

(c) Procedures for public notice, public comment periods, and public hearings shall be as follows:

(1) The executive secretary shall make available for public inspection in at least one location:

(A) Information on the subject matter;

(B) Information submitted by the applicant, except for confidential information pursuant to section 24.0505;

(C) The Commission's analysis and proposed action; and

(D) Other information and documents determined to be appropriate by the executive secretary;

(2) Notification of a public hearing shall be given at least thirty days in advance of the hearing date;

(3) A public comment period shall be no less than thirty days following the date of public notice, during which time interested persons may submit to the executive secretary written comments on:

(A) The subject matter;

(B) The application;

(C) Commission's analysis;

(D) The proposed actions; and

(E) Other considerations as determined to be appropriate by the executive secretary;

(4) Notification of a public comment period or a public hearing shall be made:

(A) by publication in a newspaper of general circulation which is printed and issued at least twice weekly;

- (B) to persons on a mailing list developed by the executive secretary, including those who request in writing to be on the list; and
- (C) If necessary by other means to assure adequate notice to the affected public;
- (5) Notice of public comment and public hearing shall identify:
  - (A) The affected facility;
  - (B) The name and address of the permittee;
  - (C) The name and address of the agency of the permitting authority processing the permit;
  - (D) The activities involved in the permit action;
  - (E) The emissions change involved in any permit modification;
  - (F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials including any compliance plan, and monitoring and compliance certification reports, and all other material available the Commission which are relevant to the permit decision, except for information which is determined to be confidential;
  - (G) A brief description of the comment procedures;
  - (H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing if one has not already been scheduled; and
  - (I) The availability of the information listed in paragraph (1), and the location and times the information will be available for inspection;
- (6) The executive secretary shall maintain a record of persons who make comments and the issues raised during the public participation process and shall provide this information to USEPA upon request and to other persons in accordance with 24.0505(c)(4).

**24.0540. General Fee Provisions.**

- (a) Every owner or operator of an air pollution emission source shall pay annual fees as set forth in section 24.0541.
- (b) Annual fees collected pursuant to these Standards and Regulations shall only be used to supplement the Stationary Air Pollution Source Fund pursuant to section 24.0543.
- (c) Annual fees for air pollution emission sources required by this chapter shall be submitted by check or money order made payable to the Stationary Air Pollution Source Fund and are not refundable.
- (d) Checks returned for any reason shall be considered a failure to pay. The returned checks are subject to an additional \$ 25 handling charge. If a returned check results in a late payment, the owner or operator shall be assessed a late payment penalty in accordance with section 24.0537

#### **24.0541. Annual Fees.**

(a) Annual fees shall be paid in full within sixty days after the end of each calendar year and within thirty days after the permanent discontinuance of the air pollution emission source;

(b) The executive secretary, upon written request from the owner or operator of an air pollution emission source, may extend the annual fee submittal deadline if the executive secretary determines that reasonable justification exists for the extension. The written request for an extension shall be submitted at least fifteen days prior to the required submission due date, and include the following information:

(1) Justification for the extension, including a showing that reasonable effort and resources have been and are being utilized in the calculation of annual emissions and the corresponding annual fee as calculated pursuant to this section;

(2) description of the problems being encountered and reasons for any delays in meeting the annual fee deadline;

(3) The current status of emission calculations; and

(4) The projected date of submitting the annual fee.

If the executive secretary disapproves an extension for the annual fee submittal, the owner or operator shall pay the required annual fees within thirty days of receipt of the disapproval notification or the original submittal deadline, whichever is later. If the executive secretary approves an extension for the annual fee submittal, the owner or operator shall pay the required annual fees by the extended approval date. Any part of the annual fee that is not paid within the required time shall at once be assessed the late penalty fee pursuant to section 24.0537.

(c) Annual fees due within sixty days after the end of each calendar year shall be based upon the calculated tons of regulated air pollutants emitted during the prior calendar year in which the annual fees are due.

(d) Annual fees due within thirty days after permanent discontinuance of the air pollution emission source shall be based upon the calculated tons of regulated air pollutants emitted after the last calendar year for which annual fees were paid.

(e) Annual fees shall be assessed for each ton of regulated air pollutant emitted by an air pollution emission source except for:

(1) Carbon monoxide emissions;

(2) Fugitive emissions if fugitive emissions are not included in the applicable requirements or AP-42.

(f) For the calendar year 2003 the dollar per ton charge shall be the base rate of \$18 per ton for each regulated air pollutant emitted by an air pollution emission source, and 10 times the base rate for each ton of hazardous air pollutants emitted by an air pollution emission source.

(g) The calculated emissions in tons per year shall be determined by using the following parameters:

(1) An emission factor derived from the allowable emission rate;

(2) The actual production, operating hours, amount of materials processed or stored, or fuel usage of the air pollution emission source during the prior calendar year the annual fees are due, as applicable; and

(3) If not already considered in the allowable emission rate, a percentage reduction factor based upon the efficiency of the air pollution control equipment. Other operating parameters of the air pollution emission source may be used in the fee calculation if approved by the executive secretary.

(h) The allowable emission rate referenced in subsection (g)(1) is based upon the emission rate specified in an air pollution control permit or applicable requirement. If the allowable emission rate is not specified in the stationary air pollution source permit or applicable requirement, the appropriate AP-42 air pollutant emission factor shall be used to determine the calculated emissions in tons per year.

(i) the parameters referenced in subsection (g)(2) shall be based upon verifiable documentation presented by the owner or operator of the air pollution emission source. If an owner or operator of an air pollution emission source cannot provide verifiable documentation on the parameters referenced in subsection (g)(2), the maximum allowable production, operating hours, amount of material processed or stored, or fuel usage shall be used in calculating the total annual tonnage of regulated air pollutants emitted from the air pollution emission source. Any fraction of a ton calculated shall be rounded up to the next whole ton to obtain the annual tonnage of each regulated air pollutant subject to annual fees.

(j) The percentage reduction factor referenced in subsection (g)(3) shall be based upon the percentage reduction provided by AP-42 or an applicable requirement. The executive secretary shall establish the appropriate percentage reduction factor, and may adjust the reduction factor based on actual performance of the air pollution control equipment.

(k) Annual fees shall be calculated on fee worksheets furnished by the executive secretary. If a fee worksheet is not provided for a particular air pollution emission source, the owner or operator of an air pollution emission source shall provide the worksheet, showing the method, assumptions, emissions factors, and calculations used to obtain the calculated emission in tons per year, for each regulated air pollutant emitted.

#### **24.0542. Penalties and Remedies.**

- (a) Any person who violates any provision of these Standards and Regulations or any term or condition of a permit shall be subject to the procedures, penalties and remedies provided in sections 24.0150 through 24.0166 ASCA.
- (b) If any part of the annual fee is not paid within thirty days after the due date, a late payment penalty of five per cent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each calendar month during which any part of the annual fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of five per cent of the then unpaid balance shall accrue and be added thereto.
- (c) If any annual fee, including the late payment penalty required by these Standards and Regulations is not paid in full within thirty days after the due date, the director may terminate or suspend any or all of the owner or operator's stationary air pollution source permits, after affording the opportunity for a hearing in accordance with 24.0505.
- (d) If any application for permit renewal is submitted after the due date, a late penalty of ten per cent of the permit application fee shall at once accrue and be added thereto. Thereafter, after every twenty day period during which any part of the application fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of ten per cent of the then unpaid balance shall accrue and be added thereto.
- (e) If an application for permit renewal is submitted more than thirty days after the due date, the Commission may delay issuance of the permit renewal beyond the expiration date of the existing permit, thereby suspending permission to the owner or operator of the air pollution emission source of any rights granted in the air pollution control permit to emit air pollution.

#### **24.0543. Stationary Air Pollution Source Fund.**

- (a) All permit annual emission fees, fines, penalties, bail forfeitures, grant funding, and other funds collected or received into the Stationary Air Pollution Source Fund shall be used solely for the direct and indirect costs of administration and implementation of the permit program under ASCA 24.0115, and for providing staff and resources to: assist permit applicants with the applications process; review and act upon permit applications; write permits; implement and enforce permit conditions including legal support; prepare guidance and rules; prepare emissions inventories; monitor air quality; inspect facilities to ensure compliance and offer assistance with pollution prevention alternatives, provide technical assistance to permittees; administer the fund, and any other duties needed to administer the provisions of the Environmental Quality Act and these standards and regulations.

(b) The executive secretary shall maintain independent records and accounts of all revenues and expenditures of the air pollution control special fund.

(c) By February 1 of each year the executive secretary shall determine what base rate shall be used to calculate annual fees for the following calendar year pursuant to section 24.0541. The base rate shall be set such that projected revenues generated from annual fees shall equal the total projected program cost, including a contingency of 10%, minus the total projected revenues from all revenue sources except for annual fees (i.e. application fees, penalties, grant funding, etc.) for that year. The base rate shall be calculated in dollars per ton of pollutant and shall be rounded up to the next whole dollar.

(d) If the executive secretary determines that the base rate for the following calendar year must be raised by more than \$1 per ton of pollutants above the current year's base rate or if the base rate shall be raised above \$10, the executive secretary shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment. The applicable procedural requirements of 24.0505 shall be used for public notice, public comment periods, and public hearings.

**24.0544-24.0549**      *Reserved*

#### **IV. STANDARDS OF PERFORMANCE FOR AIR POLLUTION EMISSION SOURCES**

##### **24.0550. Source applicability.**

(a) The standards of performance requirements of this Part are additional requirements for considering an application for an air pollution control permit required by Part III.

(b) No air pollution emission source or modification to which the requirements of this Part shall apply shall begin or continue construction, reconstruction, modification, relocation, or operation without an air pollution control permit which states that the air pollution emission source or modification would meet the requirements of this Part.

##### **24.0551. New source performance standards.**

(a) Each owner or operator of an air pollution emission source shall comply with all applicable requirements of 40 CFR Part 60, entitled "Standards of Performance for New Stationary Sources."

(b) At such times that USEPA requires owners and operators of solid waste incinerators subject to the permitting requirements of section 129(e) of the Clean Air Act to apply for and obtain federal operating permits under the provisions of 40 CFR Part 71, a copy of the federal permit application shall be sent concurrently to the Commission.

**24.0552-24.0459**      *Reserved*

## **V. HAZARDOUS AIR POLLUTANT EMISSION SOURCES.**

### **24.0560. Source Applicability- permit requirement.**

- (a) The provisions of this Chapter are applicable to any air pollution emission source which emits or has the potential to emit any hazardous air pollutant in any quantity. No air pollution emission source or modification to which the requirements of this Chapter apply shall begin or continue construction, reconstruction, modification, relocation, or operation without a stationary air pollution source permit which states that the air pollution emission source or modification will meet the requirements of this Part.
- (b) Every owner or operator of an air pollution emission source shall comply with all applicable requirements of 40 CFR Part 61, entitled “National Emission Standards for Hazardous Air Pollutants,” as amended in subsection (d). For purposes of this Part, the term “hazardous air pollutant” shall refer to the pollutants set forth at 40 CFR Part 61, section 1.
- (c) Every owner or operator of an air pollution emission source shall comply with all applicable requirements of 40 CFR Part 63, entitled “National Emission Standards for Hazardous Air Pollutants for Source Categories.”
- (d) Word and phrase substitutions for 40 CFR Part 61: “Administrator” shall mean the Commission, except in 40 CFR 61 sections 150(a)(4), 152(b)(3), and 154(d).
- (e) At such times that USEPA requires owners and operators of major sources of hazardous air pollutants to apply for and obtain federal operating permits under the provisions of 40 CFR Part 71, a copy of the federal permit application shall be sent concurrently to the Commission.