ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Air Division

Chapter 335-3-14
Air Permits

Table of Contents

335-3-14-.01 General Provisions

(1) **Air Permit.**

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

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

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

(d) **Display of Air Permit.** A person who has been granted an Air Permit for any article, machine, equipment, or other contrivance shall keep such permit under file or on display at all times at the site where the article, machine, equipment, or other contrivance is located and will make such a permit readily available for inspection by any and all persons who may request to see it.

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

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

(g) The Director may issue an Air Permit subject to conditions which will bring the operation of any article, machine, equipment, or other contrivance within the standards of Rule 335-3-14-.03(1) in which case the conditions shall be specified in writing. Commencing construction or operation under such an Air Permit shall be deemed acceptance of all the conditions specified. The Director shall issue an Air Permit with revised conditions upon receipt of a new application if the applicant demonstrates that the article, machine, equipment, or other contrivance can operate within the standards of Rule 335-3-14-.03(1) under the revised conditions.

(h) Reserved.

(i) Reserved.

(j) Reserved.

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

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

2. the Operating Permit is modified as required by Chapter 335-3-16 and any modifications are not subject to the requirements of Chapter 335-3-14-.04, or

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

4. the Operating Permit is modified as required by Chapter 335-3-16 and any modifications

are not subject to the requirements of Chapter 335-3-14-.05, or

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

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

(3) The holder of the Permit under this Part shall comply with conditions contained in such Permit as well as all applicable provisions of these rules and regulations.

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

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

(6) Delegation of Air Permit requirements to Local Air Pollution Control Programs. (Adopted March 13, 1985)

(a) Local air pollution control programs may receive delegation of authority from the Director to administer the general Air Permit requirements of paragraph (1) of this Rule within their jurisdiction provided the local air pollution program:

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

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

(b) Local air pollution control programs may receive delegation of authority from the Director to administer the Air Permit requirements of Rule 335-3-14.05 within their jurisdiction provided:

(1) the requirements of subparagraph (a)(1) of this paragraph are met; and

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

(3) the local air pollution control program adopts regulations which require that the local air pollution control program shall provide the Director a copy of preliminary determinations and public comment notices for all permits issued pursuant to Rules 335-3-14-.05 335-3-14-.02(4) at the same time the notice is forwarded for publication in the newspaper.

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

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

issued pursuant to this Section.

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

(7) **Public Participation**

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

1. **Construction at a Greenfield Site.**

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

2. The Director, at his discretion, may require Public Notification for any application received in accordance with subparagraph (1)(a) of this Rule.

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

(c) Public Notice will be held in accordance with the requirements of Rules 335-3-14-.04 and 335-3-14-.05, or 335-3-14-.06 for any application which is subject to the requirements of Rules 335-3-14-.04 or 335-3-14-.05.

(d) Construction of any article, machine, equipment, or other contrivance as described in subparagraph (1)(a) of this Rule shall not commence until after an Air Permit is issued if a public notice is required under this Rule.

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335-3-14-.02 Permit Procedure

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

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

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

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

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

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

(b) failure to notify the Director prior to intended use or operation of any article, machine, equipment, or other contrivance described in Rule 335-3-14-.0(1)(a);

(c) failure to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods; and sample such emissions in accordance with such methods at such locations, intervals and procedures as the Director may prescribe in accordance with Rule 335-3-14-01(1);

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

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

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

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

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

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

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

(g) for any other cause, after a hearing which establishes, in the judgment of the Department, that

continuance of the permit is not consistent with the purpose of this Act or regulations under it.

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

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

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

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

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2nd Revision	DEC 20, 1993	OCT 20, 1994	59 FR 52916
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335-3-14-.03 Standards for Granting Permits

(1) **General Standards.**

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

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

(c) Before an Air Permit is granted, the Director may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the article, machine, equipment, or other contrivance described in the Air Permit.

In the event of such a requirement, the Director shall notify the applicant in writing of the required size, number and location of the sampling platform; the access to the sampling platform; and the utilities for operating and sampling and testing equipment.

(d) The Director may also require the applicant to install, use, and maintain such monitoring equipment or methods; sample such emissions in accordance with such methods, at such locations, intervals, and procedures as may be specified; and provide such information as the Director may require.

(e) Before acting on an application for an Air Permit, the Director may require the applicant to furnish further information or further plans or specifications. (Revised Feb. 13, 1985)

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

(g) The Director shall deny an Air Permit where he determines that the construction and operation of such source will interfere with attaining or maintaining any primary or secondary standard established by Rule 335-3-14-.03(1). A new source or modification will be considered to interfere with attaining or maintaining a standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the NAAQS:

POLLUTANT **AVERAGING TIME**

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

1. A proposed major source or major modification subject to this Paragraph may reduce the impact of its emissions upon air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact where this impact would otherwise cause or contribute to a violation of any national ambient air quality standard or exceed the significance levels of subparagraph (g)1 of this paragraph above. In the absence of such emission reductions, the Director shall deny the proposed construction.

2. The requirements of subparagraph (g) of this paragraph shall not apply to a major stationary source or major modification which respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is

located in an area designated as nonattainment pursuant to Section 107 of the federal Clean Air Act.

(h) **Exceptions to violations of emissions limits.**

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

2. **Emergency provision.**

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

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

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

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

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

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

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

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

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

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

(2) Stack Heights.

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

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

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

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

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

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

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

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

   (iv) The preceding sentence does not include:

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

   (II) The merging of exhaust gas streams where:

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

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

      III. Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in emission limitation or, in the event that no emission

limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source:

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

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

(V) Techniques under subparagraph (a)4.(iii) of this paragraph which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

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

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

(ii) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR 51 and 52, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

$$H_g = 2.5H$$

(I) For all other stacks.

$$H_g = H + 1.5L$$

where:

Hg = good engineering practice stack height measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack;

L = lesser dimension, height or projected width of nearby structure(s), provided that the Director may require the use of a field study or fluid model to verify GEP stack height for the source; or

(iii) The height demonstrated by a fluid model or field study approved by the Director, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or nearby terraine features.

6. "Nearby" as used in subparagraph (a)5. of this paragraph is defined for a specific

structure or terrain feature and

(i) for purposes of applying the formulas provided in subparagraph (a)5.(ii) of this paragraph means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile); and

(ii) for conducting demonstrations under subparagraph (a)5.(iii) of this paragraph means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a certain distance of up to 10 times the maximum height (ht) 0.8 km from the stack that is at least 40 percent of the GEP stack height determined by the formula provided in subparagraph (a)5.(ii)(I) of this paragraph or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure of terrain feature is measured from the ground-level elevation at the base of the stack.

7. "Excessive concentration" is defined for the purpose of determining GEP stack height under subparagraph (a)5.(iii) of this paragraph and means:

(i) for sources seeking credit for stack height exceeding that established under subparagraph (a)5.(ii) of this paragraph, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than a NAAQS. For sources subject to the PSD program (Rule 335-3-14-.04), an excessive concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emissions rate to be used in making demonstrations under this Rule shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the source owner or operator;

(ii) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subparagraph (a)5.(ii) of this paragraph, either:

(I) a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects as provided in subparagraph (a)7.(i) of this paragraph, except that the emission rate specified elsewhere in these regulations (or, in the absence of such a limit, the actual emission rate) shall be used, or

(II) the actual presence of a local nuisance caused by the existing stack, as determined by the Director; and

(III) the acgtual presence of a local nuisance caused by the existing stack, as determined by the Director; and

(iii) for sources seeking credit after January 12, 1979, for a stack height determined under subparagraph (a)5.(ii) of this paragraph where the Director requires that the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subparagraph (a)5.(ii) of this paragraph, a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(b) Before acting on any Air Permit, the Director shall require that the degree of emission limitation required of any source for control of any air pollutants shall not be affected by so much of any source's stack height that exceeds GEP or by any other dispersion technique, except as provided in subparagraph (c) of this paragraph below.

(c) The provisions of subparagraph (b) above shall not apply to stack heights in existence, or dispersion techniques implemented, prior to December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed or for which major modifications, as defined pursuant to Rules 335-3-14-.05(2)(d) and 335-3-14-.04(2)(b), where carried out after December 31, 1970.

(d) If any existing source, after appropriate application of the preceding limitations and provisions, is found to exceed or potentially exceed a NAAQS or PSD increment, when operating within previously established emission limitations, the emissions limitations applicable to that source shall be modified so as to eliminate and prevent the exceedance.

(e) If any new source or source modification, after appropriate application of the preceding limitations and provisions, is predicted to exceed a NAAQS or PSD increment when evaluated under emission limitations consistent with other applicable rules and regulations, the emission limitations considered shall be deemed inadequate and different emission limits, based on air quality considerations, shall be made applicable.

(f) If any source provides a field study or fluid modeling demonstration proposing a GEP stack height greater than that allowed by subparagraphs (a)5.(i) and (a)5.(ii) of this paragraph, then the public will be notified of the availability of the study and provided the opportunity to a public hearing before any new or revised emission limitations or permit is approved.

(g) The actual stack height used or proposed by a source shall not be restricted in any

manner by requirements of this paragraph.

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4th Revision	FEB 19, 1985	JUN 10, 1985	50 FR 24196
5th Revision	NOV 10, 1992	AUG 30, 1993	58 FR 45440
6th Revision	DEC 20, 1993	OCT 20, 1994	59 FR 52916
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335-3-14-.04 Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration Permitting (PSD))

(1) **Effective Date.** The requirements of this Part shall be effective upon approval by the Environmental Protection Agency (EPA).

(2) **Definitions.** For the purposes of this Part only, the following terms will have meaning ascribed in this paragraph:

(a) **"Major Stationary Source"** shall mean:

1. Any of the following stationary sources [see subparagraph (e)] of air pollutants which emits, or has the potential to emit [see subparagraph (d) of this paragraph], 100 tons per year or more of any pollutant subject to regulation under the CAA, as amended, 42 U.S.C.7401, ET SEQ.:

carbon black plants (furnace process);
charcoal production plants;
coke oven batteries;
chemical process plants;
coal cleaning plants (with thermal dryers);
fossil-fired steam electric plants of more than 250 million British thermal units per hour heat input;
fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
fuel conversion plants;
glass fiber processing plants;
hydrofluoric acid plants;
sulfuric acid plants;
nitric acid plants;

iron and steel mill plants;
kraft pulp mills;
lime plants;
municipal incinerators capable of charging more than 250 tons of refuse per day;
portland cement plants;
primary zinc smelters;
primary aluminum ore reduction plants;
primary copper smelters;
petroleum refineries;
petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
phosphate rock processing plants;
primary lead smelters;
secondary metal production plant's;
sintering plants;
sulfur recovery plants;
taconite ore processing plants;

(i) Notwithstanding the stationary source size specified in subparagraph (a)(1)(i) of this paragraph, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the CAA; or (iii) Any physical change that would occur at a stationary source not otherwise qualifying under this Rule as a major stationary source, if the changes would constitute a major stationary source by itself.

(ii) Any physical change that would occur at a stationary source not otherwise qualifying under Rule (a) as a major stationary source, if the changes would constitute a major stationary source by itself.

(2) A stationary source that is considered major for VOC shall be considered major for ozone.

(b) **"Major Modification"** shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant (see subparagraph (w) of this paragraph] net emissions increase [see subparagraph (c) of this paragraph] of any pollutant subject to regulation under the CAA.

1. Any net emissions increase that is significant for VOC shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (P.L. 93-319, 15 U.S.C. 791 note) or any superseding legislation, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (June 10, 1920, P.L. 280, 16 U.S.C. 791a);

(iii) Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA;

(iv) Use of an alternative fuel at a stem generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(I) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975.

(II) The source is approved to use under any permit issued under the Federal Prevention of Significant Deterioration ("PSDII) regulations (40 CFR 52.21) or under regulations of this Part;

(vi) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any enforceable permit condition which was established after January 6, 1975.

(vii) Any change in ownership at a stationary source.

(c) **"Net Emissions Increase"** shall mean the amount by which the sum of the following exceeds zero:

1. Any increase in actual emissions [see Paragraph 335-3-14-.04(2)(u)] from a particular physical change or change in method of operation at a stationary source; and

2. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(i) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(I) the date five (5) years before construction [see subparagraph (h) of this paragraph] on the particular change commences [see subparagraph (i) of this paragraph]; and

(II) The date that the increase from the particular change occurs.

(ii) An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit for the source under this Part, which is in effect when the increase in actual emissions from the particular change occurs.

(iii) An increase or decrease in actual emissions of sulfur dioxide, PM10, or nitrogen oxides which occurs before the applicable minor source baseline date [see subparagraph (n)2. of this paragraph] is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions can be used to evaluate the net emissions increase for PM10.

(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level,

(v) A decrease in actual emissions is creditable only to the extent that:

(I) The old level of actual emissions or the old level of allowable emissions [see subparagraph (p) of this paragraph], whichever is lower, exceeds the new level of actual emissions;

(II) It is enforceable [see subparagraph (q) of this paragraph] at and after the time that actual construction on the particular change begins; and

(III) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

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

(d) **"Potential to Emit"** shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions (see Paragraph 16.4.2(r)) do not count in determining the potential to emit of a stationary source.

(e) **"Stationary source"** shall mean any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the CAA.

(f) **"Building, Structure, Facility, or Installation"** shall mean all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual 1987 Edition.

(g) **"Emissions Unit"** shall mean any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the CAA.

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

(i) **"Commence"** as applied to construction of a major stationary source or major modification shall mean that the owner or operator has all necessary preconstruction approvals or permits (see subparagraph (j) of this paragraph] and either has:

(1) Begun, or caused to begin, a continuous program of actual onsite construction [see subparagraph (k)of this paragraph] of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(j) **"Necessary Preconstruction Approvals or Permits"** shall mean those permits or approvals required under Alabama air quality control laws and regulations which are part of the State Implementation Plan (SIP).

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

(l) **"Best Available Control Technology (BACT)"** shall mean an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the CAA which would be emitted from any proposed major stationary source or major modification which the Director, on a case-by-case basis, taking into account energy, environmental, and source of modification through application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR 60 and 61. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

(m) **"Baseline Concentration"** shall mean that ambient concentration level which exists in the baseline area [see subparagraph (o) of this paragraph] at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

1. The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subparagraph (m). of this paragraph;

2. The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

3. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(i) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(ii) Actual emission increases and decreases at any stationary source occurring after the minor source baseline date.

(n) **"Major Source Baseline Date"** means in the case of particulate matter and sulfur dioxide, January 6, 1975; and in the case of nitrogen dioxide, February 8, 1988.

1. "Minor Source Baseline Date" means the earliest date after the trigger date on which the first complete [see subparagraph (v) of this paragraph] application is submitted by a major stationary source or major modification subject to the requirements of Federal PSD regulations or this Chapter. The trigger date is:

   (i) In the case of particulate matter and sulfur dioxides, August 7, 1977, and

   (ii) In the case of nitrogen dioxide, February 8, 1988.

2. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

   (i) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(l)(D) or (E) of the CAA for the pollutant on the date of its complete application under Federal PSD regulations or this Part:

   (ii) In the case of a major stationary source, the pollutant would be emitted in significant amounts or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(o) **"Baseline Area"** shall mean any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1) (D) or (E) of the CAA in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than one (1) microgram per cubit meter (annual average) of the pollutant for which the baseline is established.

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

   (1) The applicable standards as set forth in 40 CFR 60 and 61;

   (2) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

   (3) The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(q) **"Enforceable"** shall mean all limitations and conditions which are enforceable, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within the State Implementation Plan and any permit requirements established pursuant to 40 CFR 51.18, 40 CFR 52.21 or this Chapter.

(r) **"Secondary emissions"** shall mean emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this Part, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. secondary emissions may include, but are not limited to:

   (1) Emissions from ships or trains coming to or from the new or modified stationary source;

and

(2) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

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

(t) **"Fugitive Emissions"** shall mean those emissions which could not reasonably pass through a stack, chimney, vent, roof monitor, or other functionally equivalent opening.

(u) **"Actual Emissions"** shall mean the actual rate of emission of a pollutant from an emissions unit, as determined in accordance with subparagraphs (u)1. through (u)3. below.

1. In general, actual emissions as of any given date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the given data and which is representative of normal source operation. The Director shall allow the use of a different time period upon a determination that it is more representative of a normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2. The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on the given date as determined in subparagraph (u)1., actual emissions shall equal the potential to emit of the unit on that date.

(v) **"Complete"** shall mean, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(w) **"Significant"** shall mean, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate
(tons per year)

Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
Particulate matter	25
PM10	15
Ozone	40 (of VOC)
Lead	0.6

Fluorides	3
Hydrogen sulfide (H2s)	10
Total reduced sulfur (including H2s)	10

1. "Significant" shall mean, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under CAA, any emissions rate not listed in Subparagraph (w) of this Section.

2. Notwithstanding subparagraph (w) above, significant shall mean any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within ten (10) kilometers of a Class I area and have an impact on such area equal to or greater than one) microgram per cubic meter (24-hour average).

(x) **"Federal Land Manager"** shall mean, with respect to any lands in the United States, the Secretary of the Department with authority over such lands.

(y) **"High Terrain"** shall mean any area having an elevation 900 feet or more above the base of the stack of a source.

(z) **"Low Terrain"** shall mean any area other than high terrain.

(aa) **"Indian Governing Body"** shall mean the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(bb) **"Indian Reservation"** shall mean any Federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(cc) **"Adverse Impact on Visibility"** means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

(dd) **"Visibility impairment"** means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

(ee) **"Natural conditions"** includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(ff) **"Environmentally beneficial activity"** shall mean:
1. Any activity or project undertaken at an existing emissions unit which, as its primary purpose, reduces emissions of air pollutants from such unit, and is limited to the installation or modification of any of the following:

(i) Conventional or advanced flue gas desulfurization, or sorbent injection for SO_2;

(ii) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for particulate matter or other pollutants;

(iii) Flue gas recirculation, low-NOx burners, selective non-catalytic reduction or selective catalytic reduction for NOx;

(iv) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, flares, carbon adsorbers, or combustion devices installed or modified to comply with hazardous emission standards for volatile organic compounds or hazardous air pollutants;

(v) Activities or projects undertaken to accommodate switching to an inherently less polluting fuel, including but not limited to natural gas or coal reburning, or the cofiring of natural gas and other inherently less polluting fuels, for the purpose of controlling emissions, and including any activity that is necessary to accommodate switching to an inherently less polluting fuel;

(vi) Pollution prevention projects which the Director determines to be environmentally beneficial.

(vii) Installation or modification of a technology other than those listed in subparagraphs (ff)1.(i) through (v), for the purposes set forth in subparagraph (ff)1., which has demonstrated an effectiveness at reducing emissions and is determined by the Director to be environmentally beneficial.

2. Environmentally beneficial projects do not include:

(i) The replacement of an existing emissions unit with a newer or different unit;

(ii) Reconstruction of an existing emissions unit;

(iii) Pollution prevention projects which result in an increased risk from the release of hazardous air pollutants;

(iv) Any project which would result in the increased production of an existing emissions unit.

(v) Any project which reduces emissions solely by transferring them to or from another media.

(vi) Any project which would cause an exceedance of an existing enforceable emissions limitation which was established to avoid applicability of the requirements of this Rule.

(gg) "Pollution prevention projects" shall mean any activity that through process changes, product reformulation or redesign or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. It does not mean recycling (other than certain "in process recycling" practices), energy recovery, treatment, or disposal.

(3) **Ambient Air Increments.**

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

Maximum Allowable Increase
(micrograms per cubic meter)
Class I

Pollutant

PM10:

Annual geometric mean		4
24-hour maximum		8
Sulfur dioxide:		
Annual arithmetic mean		2
24-hour maximum		5
3-hour maximum	25	
Nitrogen dioxide:		
Annual arithmetic mean		2.5

Class II

PM10:		
Annual geometric mean		17
24-hour maximum		30
Sulfur dioxide:		
Annual arithmetic mean		20
24-hour maximum		91
3-hour maximum	512	
Nitrogen dioxide:		
Annual arithmetic mean		25

Class III

PM10:		
Annual geometric mean		34
24-hour maximum		60
Sulfur dioxide:		
Annual arithmetic mean		40
24-hour maximum		182
3-hour maximum	700	
Nitrogen dioxide:		
Annual arithmetic mean		50

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

(4) **Ambient Air Ceilings.**

No concentration of a pollutant shall exceed:

(a) The concentration permitted under the National Secondary Ambient Air Quality Standard, or

(b) The concentration permitted under the National Primary Ambient Air Quality Standard, whichever concentration is lowest for the pollutant for a period of exposure.

(5) **Area Classifications.**

(a) The following area, which was in existence on August 7, 1977, shall be a Class I area and may not be redesignated:

The Sipsey Wilderness Area, located in Franklin, Winston, and Lawrence counties, Alabama.

1. Any other area is initially designated Class II:

(6) **Exclusions from Increment Consumption.**

(a) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

1. Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

2. Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

3. Concentrations of PM10 attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

4. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

5. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, PM10, or nitrogen oxides from stationary source which are affected by plan revisions approved by the EPA as being exempt from increment consumption.

(b) No exclusion of such concentrations shall apply for more than five (5) years after the effective date of the order to which subparagraph(a)(1) of this paragraph or the plan to which subparagraph(a)(2) of this paragraph refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply for more than five (5) years after the later of such effective dates.

(7) Reserved.

(8) **Review of Major Stationary Sources and major Modification Source Applicability and Exemptions.**

(a) No major stationary source or major modification shall begin actual construction unless, as a minimum, requirements contained in paragraphs (9) through (17) of this Rule have been met.

(b) The requirements contained in paragraphs (9) through (17) shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the CAA that it would emit, except as this Rule would otherwise allow.

(c) The requirements contained in paragraphs (9) through (17) apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassified under Section 107(d)(1)(D) or (E) of the CAA.

(d) The requirements contained in paragraphs (9) through (17) shall not apply to a major stationary

source or major modification, if:

(1) Reserved.

(2) Reserved.

(3) Reserved.

(4) Reserved.

(5) Reserved.

(6) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution; or

(7) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification, and the source does not belong to any of the following categories:

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

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

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

(ix) Hydrofluoric, sulfuric or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

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

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

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

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

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA; or

(8) The source is a portable stationary source which has previously received a permit under this Part; and

(i) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(ii) The emissions from the source would not exceed its allowable emissions; and

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

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

(e) The requirements of paragraphs (9) through (17) of this Rule shall not apply to a major stationary source or ma]or modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the CAA.

(f) The requirements of paragraphs (10), (12), and (14) of this Rule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the source or the net emissions increase of that pollutant from the modification:

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

(2) Would be temporary.

(g) The requirements of paragraphs (10), (12) and (14) of this Rule as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the CAA from the modification after the application of BACT would be less than 50 tons per year.

(h) The Director may exempt a stationary source or modification from the requirements of a paragraph (12) of this Rule with respect to monitoring for a particular pollutant if:

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

Carbon monoxide - 575 ug/m3, 8-hour average;
Nitrogen dioxide - 14 ug/m3, annual average;
PM10 - 10 ug/m3, 24-hr.average;
Sulfur dioxide - 13 ug/m3, 24-hr. average;
Ozone;
Lead - 0.1 ug/m_3, 3-month average;
Fluorides - 0.25 ug/m , @4-hr. average;
Total reduced sulfur - 10 ug/m3, 1-hr. average;
Hydrogen sulfide - 0.04 ug/m-), 1-hr. average;
or

(2) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subparagraph (h)(1) of this paragraph, or the pollutant is not listed in subparagraph (h)(1) of this paragraph; or

(3) The owner or operator of the stationary source or modification submits an application under this section that the Director determines is complete, except with respect to the requirements for monitoring PM_{10} in paragraph (12) of this Rule, on or before June 1, 1988. If a complete permit application is received after June 1, 1988, but not later than December 1, 1988, the requirement for PM_{10} monitoring under paragraph (12) of this Rule apply in that data shall have been gathered over at least the period from February 1, 1988 to the date the complete application is received, except that if the Director determines that complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months) then the shorter period of data gathering will suffice to meet the requirements of Section paragraph (12) of this paragraph.

(i) Reserved

(j) Reserved

(k) At the discretion of the Director, the requirements for air quality monitoring of PM_{10} in subparagraphs (12)(a)(1) through (4) of this Rule may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for permit under this Part on or before June 1, 1988 and the Director subsequently determines that the application as submitted before that date was complete, except with respect to the e requirements for monitoring PM_{10} in subparagraph (12)(a)(1) through (4).

(l) The requirements for air quality monitoring of PM_{10} in subparagraphs (12)(a)(2) and (4) and subparagraph (12)(c) of this part shall apply to a particular source or modification submits an application for a permit under this part after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provision set forth under subparagraph (12)(a)(8) of this Rule, except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that subparagraph (12)(a)(3) requires shall have been gather over that shorter period.

1. No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of VOC subject to this Rule would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

(m) Any project which is an environmentally beneficial project as defined in subparagraph (2)(ff) of this Rule shall not be considered a major modification as defined in paragraph 92) of this Rule and is exempt from all provisions of this Rule except paragraphs (10), (11), (13), (15), and (16).

(9) Control Technology Review.

(a) A major stationary source or major modification shall meet applicable emissions limitation under the State Implementation Plan and each applicable limitation standard and standard of performance under 40 CFR 60 and 61.

(b) A new major stationary source shall apply BACT for each pollutant subject to regulation under the CAA that it would have the potential to emit in significant amounts.

(c) A major modification shall apply BACT for each pollutant subject to regulation under the CAA for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(d) For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate in the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.

(10) **Source Impact Analysis.**

The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increase or reductions (including secondary emissions) would not cause or contribute to air pollution in violation of:

(a) Any National Ambient Air Quality Standard in any air quality control region; or

(b) Any applicable maximum allowable increase over the baseline concentration in any area.

(11) Air Quality Models.

(a) All estimates of ambient concentrations required under this Rule shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models". (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711)

(12) Air Quality Analysis.

(a) **Preapplication Analysis.**

(1) Any application for a permit under this Part shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(i) For the source, each pollutant that it would have the potential to emit in a significant amount;

(ii) For the modification, each pollutant for which it would result in a significant net emissions increase.

(2) With respect to any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Director determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant affect.

(3) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(4) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year and shall represent the year preceding receipt of the application, except that, if the Director determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

(5) Reserved

(6) The owner or operator of a proposed stationary source or modification of VOC who satisfies all conditions of Rule 335-3-14-.05 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under subparagraph (a) of this paragraph.

(7) For any application that becomes complete, except as to the requirements of subparagraph (a)(3) and (4) of this paragraph pertaining to PM_{10}, after December 1, 1988 and no later than August 1, 1989 the data that subparagraph (a)(3) of this paragraph requires shall have been gathered over at least the period from August 1, 1988 to the date the application becomes otherwise complete, except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that subparagraph (a)(3) of this paragraphs requires shall have been gathered over that shorter period. (Adopted 1988)

(8) With respect to any requirements for air quality monitoring of PM_{10} under subparagraphs (8)(k) and (l) of this Rule, the owner or operator of the source or modification shall use a monitoring method approved by the director and shall estimate the ambient concentrations of PM_{10} using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Director.

(b) **Post-construction Monitoring.** The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Director determines is necessary to determine the impact for said source or modification may have, or is having, on air quality in any area.

(c) **Operations of Monitoring Stations.** The owner or operator of a major stationary source or major modification shall meet Federal monitoring quality assurance requirements during the operation of monitoring stations for purposes of satisfying section 335-3-14-.04(12).

(d) **Visibility monitoring.** The Director may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the Director deems necessary and appropriate. (Adopted Nov. 13, 1985)

(13) **Source Information.** The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or to make any determination required under this Part.

(a) With respect to a source or modification to which Rules 335-3-14-.04(9), 335-3-14-.04(10), 335-3-14-.04(12), and 335-3-14-.04(14) apply, such information shall include:

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

(2) A detailed schedule for construction of the source or modification;

(3) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates and any other information necessary to determine that BACT would be applied.

(b) Upon request of the Director, the owner or operator shall also provide information on:

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

(2) The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since Aug. 7, 1977, in the area the source or modification would affect.

(14) **Additional Impact Analyses.**

(a) The owner or operator shall provide an analysis of the impact on visibility, soils and vegetation that would occur as a result of the source or modification and general commercial.,residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(b) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

(15) **Sources Impacting Federal Class I Areas - Additional Requirements.**

(a) Notice to Federal Land Managers and to EPA. The Director shall provide notice of any permit application for a proposed major stationary source or major modification in the emissions from which would affect a Class I area to EPA, the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within any such area. The Director shall provide such notice promptly after receiving the application. The Director shall also provide EPA, the Federal Land Manager and such Federal officials with notice of every action related to the consideration of such permit.

(b) The Director shall notify all affected Federal Land Managers within 30 days of receipt of an advance notification of any permit application for a proposed major stationary source or modification, the emissions from which may affect a Class I Area. The Director shall provide

written notification to all affected Federal Land Managers within 30 days of receiving the permit application. At least 30 days prior to the publication of the notice for public comment on the application,the Director shall provide the Federal Land Manager with a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility. (adopted Nov. 13 1985)

(c) **Visibility analysis.** The Director shall consider any analysis performed by the Federal Land Manager concerning visibility impairment if the analysis is received within 30 days of being provided the permit application information and analysis required by subparagraph (b) of this paragraph above. Where the Director finds that such an analysis does not demonstrate to the satisfaction of the Director that an adverse impact on visibility will result in the Federal Class I area, the Director must, in the notice of public comment on the permit application, either explain his decision or give notice as to where the explanation can be obtained.

(d) **Denial - Impact on Air Quality Related Values.** The Federal Land Manager of any such lands may demonstrate to the Director that the emissions from a proposed source or modification would have an adverse impact on the air quality related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Director concurs with such demonstration, then he shall not issue the permit. (Recodified Nov. 13, 1985)

(e) **Class I Variances.** The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies, the Director may issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide and PM10 would not exceed the following maximum allowable increases over baseline concentration for such pollutants:

	Maximum Allowable Increase (micrograms per cubic meter)
PM10:	
Annual geometric mean	17
24-hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

provided, that the applicable requirements of this Part are otherwise met.

(f) **Sulfur Dioxide Variance by Governor with Federal Land Manager's Concurrence.** The owner or operator of a proposed source or modification which cannot be approved under

subparagraph (c) of this paragraph may demonstrate to the Governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four (24) hours or less applicable to any Class I area and in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Director shall issue a permit to such source or modification pursuant to the requirements of subparagraph (f) of this paragraph provided, that the applicable requirements of this Part are otherwise met. (Recodified Nov. 13, 1985)

(g) **Variance by the Governor with the President's Concurrence.** In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the Director shall issue a permit pursuant to the requirements of subparagraph (f) of this paragraph: provided, that the applicable requirements of this Part are otherwise met.

(h) **Emission Limitation for Presidential or Gubernatorial Variance.** In the case of a permit issued pursuant to subparagraphs (d) or (e) of this paragraph, the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase
(micrograms per cubic meter)

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

(16) **Public Participation.**

(a) After receipt of an application for an Air Permit or any addition to such application, the Director shall advise the applicant of any deficiency in the application or in the information submitted. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this Part, the date on which the Director received all required information.

(b) Within one (1) year after receipt of a complete application, the Director shall make a final determination of the application. This involves performing the following actions in a timely

manner:

(1) Make a preliminary determination whether construction should be approved, approved with conditions or disapproved.

(2) Make available in at least one location in each region in which the proposed source or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by advertisement in a newspaper or general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for written public comment, as well as comment at a public hearing.

(4) Send a copy of the notice of public comment to the applicant, to EPA and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other State or local air pollution control agencies, the chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted to the public. The Director shall consider the applicant's response in making a final decision. The Director shall make all comments available for public inspection in the same locations where the Director made available preconstruction information relating to the proposed source or modification.

(7) Make a final determination whether construction should be approved, approved with conditions or disapproved pursuant to this Part.

(8) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Director made available preconstruction information and public comments relating to the source or modification.

(17) **Source Obligation.**

(a) An Air Permit authorizing construction shall become invalid if construction is not commenced within twenty-four (24) months after receipt of such approval, if construction is discontinued for a period of twenty-four (24) months or more, or if construction is not completed within a reasonable time. The Director may extend the twenty-four (24) month period upon satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction

within twenty-four (24) months of the projected and approved commencement date.

(b) An Air Permit authorizing construction shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, State or Federal law.

(c) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of paragraphs (9) through (17) of this Rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(18) **Innovative Control Technology.**

(a) As owner or operator of a proposed major stationary source or major modification may request t the Director in writing no later than the close of the comment period under paragraph (16) of this Rule to approve a system of innovative control technology.

(b) The Director shall determine that the source or modification may employ a system of innovative control technology, if:

(1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare or safety in its operation or function;

(2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under subparagraph (9)(b) of this Rule by a date specified by the Director. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance;

(3) The source or modification would meet the requirements of paragraphs (9) and (10) of this Rule based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Director;

(4) The source or modification would not before the date specified by the Director:

(i) cause or contribute to a violation of an application National Ambient Air Quality Standard; or

(ii) Impact any Class I area; or

(iii) Impact any area where an applicable increment is known to be violated; and

(5) The consent of the Governor of any other affected date is secured;

(6) All other applicable requirements including those for public participation have been met.

(c) The Director shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare or safety; or

(3) The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare or safety.

(d) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn accordance with subparagraph (c) of this paragraph, the Director may allow the source or modification up to an additional three (3) years to meet the requirement for the application of BACT through use of a demonstrated system of control.

(19) **Permit Rescission.**

(a) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under this Rule as in effect on July 30, 1987 or any earlier version of this Part may request that the Director rescind the permit or a particular portion of the permit.

(b) The Director shall grant an application for rescission if the application shows that this Part would not apply for the source or modification.

(c) If the Director rescinds a permit under this Rule, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region within sixty (60) days of the rescission shall be considered adequate notice.

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2nd Revision	NOV20, 1985	FEB 10, 1986	51 FR 4908
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5th Revision	JUN 29, 1988	SEP 24, 1990	55 FR 38996
6th Revision	OCT 22, 1990	JUN 09, 1992	57 FR 24368
7th Revision	DEC 20, 1993	OCT 20, 1994	59 FR 52916
8th Revision	AUG 14, 1995	FEB 12, 1996	61 FR 5286
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335-3-14-.05 Air Permits authorizing construction in or near Nonattainment Areas

(1) **Effective Date.** The requirements of this Rule shall be effective upon approval by EPA.

(2) **Definitions.** For purposes of this Rule, the following terms will have the meanings ascribed in this Paragraph:

(a) **"Source"** shall mean any building structure, installation, article, machine, equipment, device or other contrivance which emits or may emit any air contaminant. A facility is composed of one or more pollutant-emitting sources.

(b) **"Potential to Emit"** shall mean the maximum capacity to emit a pollutant under physical and operational design conditions. Any physical or operational limitation on the capacity to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or o@-the type or amount of material combusted, stored or processed, shall be treated as a part of the design only if the limitation or the effect it would have on emissions is enforceable. Secondary emissions are not calculated in determining the potential to emit.

(c) **"Major Facility"** shall mean:

1. Any source or facility for which the potential emission rate is equal to or greater than 100 tons per year of any pollutant subject to regulation under the Federal Clean Air Act (CAA); or

2. Any physical change-that would occur at a facility not qualifying under subparagraph (c)(1)(i) above as a major facility, if the change would constitute a major facility by itself.

3. Furthermore, a major facility that is major for volatile organic compounds and/or nitrogen oxides shall be major for the pollutant ozone.

(d) **"Major Modification"** shall mean any physical change in, change in the method of operation **of,** or addition to a major facility which would result in a significant net emissions increase at the facility of any pollutant subject to regulation under the CAA.

(1) A physical change or a change in method of operation shall not include:

(i) Routine maintenance, repair, and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order in effect under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA;

(iv) Change in ownership of a source;

(v) Use of refuse derived fuel generated from municipal solid waste.

(2) A change in the method of operation, unless limited by previous permit conditions, shall not include:

(i) An increase in the production rate, if such increase does not exceed the operating

design capacity of the source;

(ii) An increase in the hours of operation;

Use of an alternative fuel or raw material, if on December 21, 1976, the source was capable of accommodating such fuel or material.

(e) **"Allowable Emissions"** shall mean the emission rate calculated using the maximum rated capacity of the source (unless the source is subject to enforceable permit conditions which limit the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) Applicable New Source Performance Standards set forth in 40 CFR 60,

(2) Applicable National Emission Standards for Hazardous Air Pollutants set forth in 40 CFR 61,

(3) Applicable State Implementation Plan emission limitation, or

(4) The emission rate specified as an enforceable permit condition.

(f) **"Lowest Achievable Emission Rate"** (LAER) shall mean, for any source, that rate of emissions based on whichever of the following.is more stringent:

(1) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(2) The most stringent emission limitation which is achieved in practice or can reasonably be expected to occur in practice by such class or category of sources taking into consideration the pollutant which must be controlled,

(3) This term, applied to a modification, means the lowest achievable emission rate for the new or modified source within the facility. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the Amount allowable under applicable new source standards of performance.

(g) Reserved.

(h) Reserved.

(i) **"Significant Impact"** shall mean the following significant levels would be exceeded in the portion of the designated nonattainment area where the ambient air quality standards are actually violated.

Pollutant	Annual	24-Hour	8-Hour	3-Hour	1-Hour
PM_{10}	1 $\mu g/m^3$	5 $\mu g/m^3$			
SO_2	1 $\mu g/m^3$	5 $\mu g/m^3$		25 $\mu g/m^3$	
NO_2	1 $\mu g/m^3$				

CO			0.5 mg/m^3		2 mg/m^3

(j) **"Net Emissions Increase"** shall mean,

(1) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in the method of operation, and

(ii) Any other increases and decreases in actual emissions that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(i) The date five (5) years before construction on the particular change commences, and

(ii) The date that the increase from the particular change occurs.

(3) An increase or decrease n actual emissions is creditable only if:

(i) It has not been relied on in issuing a permit to the facility which -'is in effect when the increase in actual emissions from the particular change occurs, and

(ii) It occurs after the effective date of this Rule.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins;

(iii) It has not been relied on in issuing any permit under the State Implementation Plan or in demonstrating attainment or reasonable further progress; and

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

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

(k) **"Significant"** shall mean, in reference to a net emissions increase or the potential of a source or facility to emit any of the following pollutants, a rate of emissions that would equal or exceed any

of the following rates:

Pollutant and Emissions Rate (tons per year)

Carbon monoxide:	100
Nitrogen oxides:	40
Sulfur dioxide:	40
Ozone (volatile organic compounds):	40
Lead:	0.6

(l) **"Actual Emissions"** shall mean the actual rate of emissions of a pollutant from a source as determined by Subdivisions (1)2. through 4.

1. In general, actual emissions as of any given date shall equal the average rate in tons per year at which the source actually emitted the pollutant during a two-year period which precedes the given date and which is representative of normal source operation. The use of a different time shall be allowed upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the sources's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.

2. The reviewing authority may presume that source specific allowable emissions for the source are equivalent to the actual emissions of the source.

3. For any source which has not begun normal operations on the given date, actual emissions shall equal the potential to emit of the source on that date.

(m) **"Construction"** shall mean any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of a source) which would result in a change in actual emissions.

(n) **"Commence"**, as applied to construction of a major facility or major modification, shall mean that the owner or operator has all necessary preconstruction approvals or permits and has either:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(o) **"Necessary Preconstruction Approvals or Permits"** shall mean those permits or approvals required under the State Implementation Plan.

(p) **"Begin Actual Construction"** shall mean, in general, initiation of physical on-site construction activities including, but not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(q) **"Adverse Impact on Visibility"** shall mean -risibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these

factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

(r) **"Visibility Impairment"** shall mean any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

(s) **"Natural Conditions"** includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

(t) **"Offset ratio"** shall mean the ratio of total actual emissions reductions to total allowable emissions increases of such pollutant from the new source.

(3) **Applicability.** Except as provided in paragraphs (4), (5), and (6), no Air Permit shall be issued to a person proposing to construct or make a major modification to a major facility (for the pollutant for which the area has been designated nonattainment) in a nonattainment area or which will have a significant impact if located outside the nonattainment area unless:

(a) The person demonstrates that the new source or the major modification will meet an emission limitation, said emission limitation to be the lowest achievable emission rate (LAER) for that source or facility;

(b) The person certifies that all existing major sources owned or operated by that person (or any entity controlling, controlled by, or under common control with that person) within Alabama are in compliance with applicable emission limits or are on an acceptable schedule;

(c) The person demonstrates that emission reductions from existing source(s) in the area of the proposed source/major modification (whether or not under the same ownership) meet-- the offset requirements of (7) of this Rule;

(d) Reserved.

(4) **Exceptions.** Construction of or modification to a major source locating in a nonattainment area which is projected to be attainment as of the startup date of such source shall be exempt from the requirements of this Rule.

(5) **Temporary Emissions.** The requirements of subparagraph (3)(c) of this Rule shall not apply to emissions of a particular pollutant if the person applying for an Air Permit under this Rule can demonstrate that the emissions of the pollutant are of a temporary nature including but not limited to those from a pilot plant, a portable facility, construction, or exploration; and notice is given to the Director at least thirty (30) days prior to relocation of such source identifying the proposed new location and the probable duration of operation at such location.

(6) When a facility or modification subject to this Section may impair the visibility of a Federal Class I area, the following procedures shall be followed:

(a) The facility shall provide an analysis of the impairment to visibility that would occur as a result of the facility or modification and general commercial, industrial and other growth associated with the facility or modification.

(b) The Director shall notify all affected Federal Land Managers within 30 days of receipt of any advance notification of a permit application for a proposed major stationary facility or modification, the emissions from which may affect a Class I Area. The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application. At least 30 days prior to the publication of the notice for public comment on the application, the Director shall provide the Federal Land Manager with a copy of all information relevant to the permit application including an analysis provided by the facility of the potential impact of the proposed facility on visibility.

(c) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of being provided the permit application information and analysis required in subparagraph (b) of this paragraph. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse intact on visibility will- result in the Federal Class I area, the Director shall provide in the notice for public comment on the application, an explanation of his decision or notice as to where the explanation can be obtained.

(d) The Director may require monitoring of visibility in any Class I area near the proposed new facility or modification.

(e) The requirements of this Paragraph shall not apply to a particular major stationary facility or major modification, if the facility or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur,.at such an institution, and the Governor of Alabama requests that it be exempt from those requirements.

(7) **Offset Standards.**

(a) Increased emissions by a source or facility subject to this paragraph must be offset by a reduction in the emissions of that pollutant by the source itself or by other sources in the area to the extent necessary to prevent interference with reasonable further progress toward attainment.

(1) The offset ratio for ozone (marginal) nonattainment areas shall be at least 1.1 to 1.

(2) The offset ratio for all other nonattainment areas shall be at least 1.0 to 1.

(b) When a major source or modification, which is otherwise subject to the requirements of this Paragraph, will result in a specific and well defined increase in secondary emissions, which can be accurately quantified and which will impact the same nonattainment area, these emissions shall be offset in accordance with the requirements of this Paragraph.

(c) The baseline for determining credit for emission offsets of any source shall be the allowable emissions of said source or the existing emissions of said source, not 4-including any malfunctions, whichever is less.

(d) Reduced allowable emissions from an existing source due to a change to a cleaner fuel may be used to offset emissions from the new source or alteration so long as the change will occur at some future date. Emission reductions from a change of fuel shall not be used to offset emissions if there are not adequate supplies of the new fuel available.

(e) Offsets shall be made on a tons-per-year basis when all facilities involved in the emission offset calculations are operating at their maximum expected production rate. However, a source may be

credited with emission reductions achieved by the shutdown of a source or the curtailment of production of a source below that which existed at the time the application was submitted, provided that the work force to be affected has been notified of the proposed shutdown or curtailment.

(f) All emission reductions used for offsets must be legally enforceable in a manner approved by the Director.

(8) Reserved.

(9) **Banking of Emission Offsets.** Offsets approved after January 16, 1979, which exceed the requirement of reasonable further progress may be "banked" for future use; likewise, reductions in emissions from existing sources which exceed the requirement of reasonable further progress may be "banked" for future use. The banking is subject to the following requirements:

(a) (1) Application shall be made in writing to the Director, describing the emission offsets to be banked, such description to include location, source, and type of emissions.

(2) Emission offsets cannot be banked beyond the allowable emissions of said source or the existing emission of said source, not including any malfunctions, whichever is less.

(b) Upon approval by the Director of said application, the banked emissions shall be credited to the facility submitting such application.

(c) (l) No emission offsets banked in accordance with the provisions of this Paragraph shall be used unless written notice is provided to the Director thirty (30) days prior to submission of the necessary permit applications, to provide opportunity for review of the Proposed use of the banked emission offsets.

(2) In the event that a determination is made that the banked emission offsets may not be used for the proposed construction, written notice shall be afforded the applicant, as provided in Rule (3), herein.

(d) In the event that a determination under subparagraph (c)2 of this paragraph. is made by the Director, construction may proceed if, and only if, emission offsets are obtained sufficient to satisfy the requirements of this Rule.

(e) Nothing contained in this Paragraph shall prohibit the transfer, assignment, sale, or otherwise complete disposition of said banked emission offsets, provided that written notice is provided to the Director, thirty (30) days prior to such disposition, describing in detail the recipient of the banked emissions.

(10) **Reserved.**

(11) At such time that a particular source or facility or modification becomes a major facility or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source, facility or modification otherwise to emit a pollutant, then the requirements of this Rule shall apply as though construction had not yet commenced.

(12) The requirements of this Rule shall not apply to a particular major stationary facility or major modification if:

(a) The major facility or major modification was not subject to this Rule as in effect on November 26,

1979, or to the Federal Emission Offset Interpretative Ruling as in effect January 18, 1979, if the owner or operator:

(1) Obtained all necessary preconstruction approval before August 7, 1980;

(2) Commenced construction within 18 months from August 7, 1980; and

(3) Did not discontinue construction for a period of (18) eighteen months or more and completed construction within a reasonable time or

(b) The facility or modification would be a major stationary facility or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary facility or modification and the facility; does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);

2. Kraft pulp mills;

3. Portland cement plants;

4. Primary zinc smelters;

5. Iron and steel mills;

6. Primary aluminum ore reduction plants;

7. Primary copper smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric, sulfuric or nitric acid plants;

10. Petroleum refineries;

11. Lime plants;
12. Phosphate rock processing plants;

13. Coke oven batteries;

14. Sulfur recovery plants;

15. Carbon black plants (furnace process)

16. Primary lead smelters;

17. Fuel conversion plants;

18. Sintering plants;

19. Secondary metal production plants;

20. Chemical process plants;

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

22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

23. Taconite ore processing plants;

24. Glass fiber processing plants;

25. Charcoal production plants;

26. Any other stationary category which, as of August 7, 1980 is being regulated under Sections 111 or 112 of the Clean Air Act;

(13) **Public Participation.**

(a) After receipt of an application to construct or any addition to such application, the Director shall advise the applicant of any deficiency in the application or in the information submitted. In the event of such a deficiency, the date of receipt of the application shall_be, for the purpose of this Rule the date on which the Director received all required information.

(b) Within one (1) year after receipt of a complete application, the Director shall make a final determination of the application. This involves performing the following actions in a timely manner:

1. Make a preliminary determination whether construction should be approved, approved with conditions or disapproved.

2. Make available in at least one location in each region in which the proposed facility or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

3. Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed facility or modification would be constructed, of the application, the preliminary determination, and the opportunity for written public comment, as well as comment at a public hearing.

4. Send a copy of the notice of public comment to the applicant, to EPA and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies, the chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the facility or modification.

5. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the facility or modification, the control technology required, and other appropriate considerations.

6. Consider all written comments submitted within a time specified in the notice of public

comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Director shall consider the applicant's response in making a final decision. The Director shall make all comments available for public inspection in the same locations where the Director made available preconstruction information relating to the proposed facility or modification.

7. Make a final determination whether construction should be approved, approved with conditions or disapproved pursuant to this Rule.

8. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Director made available preconstruction information and public comments relating to the facility or modification.

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